

MEETING
STATE OF CALIFORNIA
SECRETARY OF STATE
VOTING SYSTEMS AND PROCEDURES PANEL

SECRETARY OF STATE
1500 11TH STREET
1ST FLOOR AUDITORIUM
SACRAMENTO, CALIFORNIA

THURSDAY, JANUARY 15, 2004

10:00 A.M.

JAMES F. PETERS, CSR, RPR
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

PANEL MEMBERS

Mr. Mark Kyle, Chairperson

Mr. Marc Carrel, Vice Chairperson

Mr. Terri Carbaugh

Ms. Caren Daniels-Meade

Mr. Tony Miller

Mr. John Mott-Smith

Mr. Bernard Soriano

STAFF

Ms. Dawn Mehlhaff, Program Manager, Voter Outreach
Programs

Mr. Michael Wagaman

ALSO PRESENT

Mr. Jeremiah Akin, Riverside County

Ms. Kim Alexander, California Voter Foundation

Ms. Judy Bertelsen, Alameda County

Mr. John Burn, Avante

Ms. Anita Cameron, American Association of People with
Disabilities

Ms. Megan Clark, Marin County elected official

Mr. Greg Dinger, Verifiedvoting.org

Mr. Mark Dyken, Calaveras County

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APPEARANCES CONTINUED

ALSO PRESENT

Ms. Joyce Eden, Santa Clara County

Mr. Lowell Finley, Alameda County

Mr. Steve Freeman, Consultant to Voting Systems Panel

Ms. Barbara Goodwin, Santa Clara County

Ms. Heather Heckler, Freed Center for Independent Living

Ms. Deborah Hensch, San Joaquin County Registrar of Voters

Mr. Joseph Holder, Stanislaus County

Mr. Neil Hudson, Stanislaus County

Ms. Genegieve Katz, Alameda County

Mr. Lou Katz, Alameda County

Mr. Steve Kerman, Palo Alto

Mr. Robert Kibrick, Santa Cruz County

Mr. Scott Konopasek, San Bernardino Registrar of Voters

Mr. Dan Kysor, California Council of the Blind

Mr. Jim March

Ms. Conny McCormack, Los Angeles County Registrar,
Recorder, County Clerk

Mr. Hebard Olsen

Mr. Dennis Paull, San Mateo County

Mr. Mark Phillips, San Luis Obispo Citizens for Open
Voting

Mr. Jim Reynolds, Newport Beach

Ms. Marcia Rider, Santa Cruz County

APPEARANCES CONTINUED

ALSO PRESENT

Mr. Scott Ritchie, Yolo County

Mr. Linda Roberts, Peace and Freedom Party

Mr. Phil Rockey, Oakdale City Councilmember

Mr. T.S. Siegel, Lake County

Ms. Maureen Smith, Santa Cruz County

Ms. Tara Treasurfield, Sonoma County

Mr. Steve Trout, San Bernardino Assistant Registrar of
Voters

Mr. Lindsay Vurek, Alameda County

Ms. Ann West, San Mateo County

Ms. Marsha Wharff, Mendocino County Assessor, Clerk,
Recorder, Registrar of Voters

Ms. Jocelyn Whitney, R&G Consultants

Mr. Tim Zorach

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CHAIRPERSON KYLE: Good morning. My name is Mark
Kyle. I'm the Chair of the Voting Systems and Procedures
Panel and Under Secretary of State.

I'd like to welcome everyone here this morning,
members of the press, county registrar of voters, county
clerks, their staff, election advocates and general
public.

And thank you, the panel, for being here.

Terri Carbaugh has recused herself from the first
agenda item for a potential conflict. And will be joining
us for the remaining of the agenda items.

So I'd like to just go to the first agenda item.

We have a number of people here today. So before
we go any further, for those folks who are new and haven't
been here before, we'll hear staff reports on the
different agenda items. There'll be panel question and
discussion, if any. And then we'll address public
comments like our -- but considering the volume of the
requests and the number of people here today, which is a
little high, then in order to be able to accommodate
everyone I'm going to ask two things:

That if you have something in writing, you can
submit it. And we've got a number of submissions already.
We're taking those. They'll be entered into the record

1 formally today. So in lieu of testifying, you might
2 consider just giving us something in writing. That will
3 be considered.

4 And also we'll probably limit the testimony to
5 two or three minutes. So try to think of what your key
6 points are. That way we'll be able to get everyone. And
7 we'll take that testimony into the record.

8 But I'd like to go to the first agenda item, a
9 continuation of the Diebold Election Systems item from the
10 previous hearing.

11 Staff would please make a report.

12 MR. WAGAMAN: Thank you, sir.

13 Just to recap, on November 10th of last year the
14 VSPP conditionally certified the Diebold TSx Voting
15 System. The three conditions that were imposed were:

16 1) That Diebold fund an inventory of the
17 hardware, firmware, and software use in its client
18 counties;

19 2) That they cooperate in the conduct of the
20 inventory, and;

21 3) That they participate in the meeting of this
22 panel on December 16th of last year.

23 At that December 16th meeting, the VSPP took
24 several actions:

25 1) It ordered Diebold to absorb the costs in the

1 Install GEM Software Version 1-1818 in all of its
2 California client counties.

3 2) It concluded that while Diebold had met the
4 conditions of one and three of the conditional
5 certification, that additional documentation was needed by
6 the state's technical consultant, and that that
7 documentation was received too late to be reviewed.
8 Therefore, you tabled the discussion until today.

9 3) You directed staff to continue the inventory
10 process for the remaining 41 counties, and

11 4) You directed staff to review state procedures
12 relating to voting systems.

13 To give you an update of our progress in the last
14 month: Regarding Item 1, the installation of 1-1818, on
15 December 23rd, of last year the counties were notified of
16 the order of this panel. They're instructed to notify the
17 Secretary of State upon completion of the upgrade. As of
18 January 5th of this year all counties had completed the
19 upgrade with the exception of Los Angeles County, which is
20 running version 1-1818-102.

21 On Item 2, review of the documentation, our
22 technical consultant, Mr. Freeman, has been working with
23 representatives from Diebold. However, there is still
24 documentation and technical support he needs from the
25 company. Upon receiving that information, Mr. Freeman has

1 indicated it would take an additional week to complete his
2 review. And we do have Mr. Freeman present if the Panel
3 would like to ask additional questions about that process.

4 On Item 3, the review of the inventory of the
5 remaining counties. On December 22nd of last year a memo
6 was sent to all the counties requesting information
7 regarding both their voting system components as well as
8 their policies and procedures related to those systems.
9 All counties were -- all 58 counties were asked to submit
10 policies and procedures. But only counties that did not
11 participate in the original Diebold inventory were asked
12 to submit information regarding their voting system
13 components.

14 As of this week 25 of the 41 counties have
15 responded and provided information on their voting system
16 components. Ten of the counties have provided information
17 on their policies and procedures.

18 The Secretary of State has finalized its contract
19 with R & G Consultants to inventory voting systems in the
20 remaining counties and policies and procedures in all 58
21 counties. They are currently in the process of meeting
22 with the vendors to familiarize themselves with the
23 individual voting systems. And they plan on beginning
24 on-site visits next week. We also have Jocelyn Whitney
25 from R & G present to answer any additional questions you

1 have on that item.

2 Finally, as to the other directives from the
3 Voting Systems and Procedures Panel, there were ten items
4 you asked us to -- staff to take action on. I'd like to
5 give you an update on those items.

6 First, a biennial review of county voting
7 systems. Staff is currently working with R & G to develop
8 the process, schedule, and procedures to implement that.
9 Those processes and that schedule will be developed upon
10 completion of the ongoing inventory.

11 Two, random audits, also known as parallel
12 testing. We have a new contract with R & G. And we are
13 working to develop the procedures and protocols to
14 implement this provision for the March primary of this
15 year.

16 Three, voting systems accounting process. Under
17 the new contract with R & G, we will work with --
18 secretary of State staff is working with them to develop
19 this process, as well as to develop Item 4, the
20 distribution of software for installation.

21 On Item 5, the poll worker training program.
22 Secretary of State staff is currently reviewing similar
23 programs from other states, and will provide a
24 recommendation on a later date. Again, R & G is working
25 with us on that process.

1 The Technical Oversight Committee. The staff is
2 currently developing a proposal for review by this Panel
3 and by the Secretary.

4 The Voting Systems Security Fund is currently
5 under legal review.

6 Item 8, transmit a copy -- a comprehensive letter
7 to each county. That has been completed. A letter has
8 been sent detailing the information and documentation that
9 will be required for the on-site reviews.

10 Nine, the on-site county reviews. As I discussed
11 earlier, this process will begin next week, and continue
12 on a timeline that is worked out between R & G and the
13 appropriate county staff.

14 And, ten, the revised on-site county voting
15 systems review questionnaire has been completed.

16 At this time that concludes the staff report.

17 CHAIRPERSON KYLE: And we have the -- I see a
18 note that we have 55 written statements.

19 MR. WAGAMAN: We have a total of -- we have 55
20 written statements that we have received on this
21 particular agenda item, that is correct.

22 CHAIRPERSON KYLE: Okay. So I'd like to have
23 those formally moved into the record.

24 MR. WAGAMAN: Absolutely.

25 CHAIRPERSON KYLE: And have -- I don't believe I

1 have copies of all of those. So if you could double check
2 and make sure all the panel has copies.

3 MR. WAGAMAN: Absolutely.

4 CHAIRPERSON KYLE: That would be great.

5 Do we have a recommendation on a go-forward basis
6 then?

7 MR. WAGAMAN: Our recommendation is that because
8 a) the technical review has not been completed by our
9 consultant and also because the inventory is continuing
10 for the 41 counties, that the Panel does not take action
11 at this time and waits for those processes to continue and
12 moves this item to another date.

13 PANEL MEMBER DANIELS-MEADE: Do we have a
14 recommendation as to how long that's going to take, an
15 estimate?

16 MR. WAGAMAN: I would defer to Mr. Freeman to
17 give us an update on the progress of his review.

18 MR. FREEMAN: As far as the report over the
19 changes that have been listed and provided to me --

20 CHAIRPERSON KYLE: Can folks hear him?

21 MR. FREEMAN: In regard to the review of the
22 changes that have been provided to me, the list of
23 changes, I've got several requests for information in that
24 Diebold is trying to work on and provide me. Once I have
25 those, I expect to be completed within a week, and

1 probably less depending on how much of the information
2 they're able to give me.

3 CHAIRPERSON KYLE: Mr. Carrel?

4 VICE CHAIRPERSON CARREL: Mr. Freeman, I'm
5 wondering at this point, given your analysis so far -- I
6 guess my questions relate more to the three counties that
7 had federal qualified software rather than the software
8 that was -- certified, which was Trinity, Lassen, and Los
9 Angeles. And Los Angeles still has the issue of
10 1-1818-102.

11 Given what you've seen so far, are you at a point
12 where you can't make any judgment whatsoever on the
13 significance of these changes or you can't give us some
14 sense of where we're headed?

15 MR. FREEMAN: I think I can give a general sense
16 on it. When we're talking about the earlier releases,
17 particularly the ones where I believe it was Liberty and
18 Lassen, that was Version 1-1720. It was basically -- and
19 it seems to be an interim release that was put out so that
20 they could be able to support the requirements for what
21 Diebold call the VG2 requirement. And that's a
22 requirement to support declared voters at primary --
23 participate in the primary for partisan ballots.

24 In that particular case it was installed and used
25 to meet a March -- I think it was March 2nd -- something

1 like that -- the March 2002 primary. There was some
2 subsequent changes, revisions, and testing done. And a
3 lot of that was cleaned up and finished out in 1722.

4 However, that 1720 remained in those counties
5 because they didn't feel like it was a need to pick up the
6 later version since it involved a lot of hardware that
7 they weren't upgraded to. And one of the questions and
8 issues that I have that's on the table with Diebold is
9 they provide me some configuration information on those
10 hardware configurations in order -- where the critical
11 break points are.

12 On those particular ones, as far as I can tell it
13 doesn't make sense for them to continue using the 1720.
14 But of course they've already done the 1-1818. And I'm
15 not sure that it's worth spending any time on those
16 earlier ones unless there's an open question there.

17 VICE CHAIRPERSON CARREL: I guess my open
18 question is -- it's based on the question that occurred
19 last meeting. They installed 1720 while they put 1720 in
20 federal qualification testing. That then came out as
21 1722. And my question is: Was anything significantly
22 changed between the 1720 version and 1722 version through
23 the interaction between Wyle or Siberg -- I'm not sure
24 which you went to -- and Diebold and before -- so that it
25 came out as 1722? Because clearly it was not the same

1 version going in. And were any of those changes regarding
2 security? Were any of those changes regarding anything of
3 a significant nature that we should be concerned about?

4 MR. FREEMAN: Most of -- there were several
5 significant changes within that. And the thing is, I
6 can't tell at this point as just how much that affected
7 those particular counties.

8 VICE CHAIRPERSON CARREL: Okay. And that's the
9 information you're still working through?

10 MR. FREEMAN: Yeah, and issues and term to
11 hardware configurations. If any of those critical changes
12 had to do with hardware that's not used in those counties,
13 then probably it wasn't that big an issue.

14 I suspect we're going to find out that there are
15 some minor issues in terms of that. It probably should
16 have been upgraded to 1722. But I don't see anything at
17 the current time that indicates a risk of the election
18 results.

19 VICE CHAIRPERSON CARREL: And that's another
20 thing. I don't suspect, but are you investigating the
21 changes in software to determine based on the hardware
22 that were being used on at the time, not only for 1720 but
23 any of the 17 series or any of the 18 series that was
24 either not certified or not qualified, that it might have
25 had an effect on an election? Or are you not looking at

1 that issue? You're just looking at how these interact
2 with the hardware?

3 MR. FREEMAN: I'm not sure I follow that
4 particular question. Are you asking am I taking a look at
5 the hardware itself to see --

6 VICE CHAIRPERSON CARREL: No. Are you taking a
7 look at the software in conjunction knowing what hardware
8 was that was being used on --

9 MR. FREEMAN: Right. Because many of those
10 items -- and unfortunately the information that they've
11 given you isn't specific enough to tell me -- are
12 conditional on the conditions that may occur in an
13 election. A lot of those conditions may not have anything
14 to do with anything going on in California. There's a lot
15 of rules and changes that had to do with some Texas laws
16 and changes. And if those particular conditions that cost
17 critical errors do not occur within the California
18 elections, it's not particularly an issue for us that
19 somebody needs to be cleaned up. But it didn't
20 particularly play a risk to local elections.

21 VICE CHAIRPERSON CARREL: I see.

22 Okay. And as staff said, it would take a week.
23 And you are expecting that by next week or a week after
24 you receive the information you'll be able --

25 MR. FREEMAN: I'm anticipating about a week after

1 the information.

2 VICE CHAIRPERSON CARREL: And do you have an
3 understanding with Diebold as to when that information
4 will be provided?

5 MR. FREEMAN: At the current time I don't. I was
6 expecting it earlier this week. But it seems like it's
7 been harder to get together than I thought or anticipated.
8 They have not been able to come up with that information
9 as of this morning.

10 VICE CHAIRPERSON CARREL: Thank you.

11 CHAIRPERSON KYLE: Bernard, do you have some
12 questions?

13 PANEL MEMBER SORIANO: No, my question was
14 already asked. It was whether or not Diebold had made a
15 commitment on when they would be turning over the
16 documents or the information. But you already addressed
17 that;

18 CHAIRPERSON KYLE: Other questions from the
19 Panel -- Tony, Caren, John?

20 Marc?

21 All right. Mr. Carrel indicates he has some
22 additional requests to make, but he'll wait until after
23 public comment.

24 So if you wouldn't mind assisting me, Mr. Carrel?

25 VICE CHAIRPERSON CARREL: Okay. Phil Rockey.

1 We have 13. Several of them have several items
2 on them, and one doesn't have any item number. I'm just
3 assuming it was for Item No. 1. And if it's not, we'll
4 find out when it comes up.

5 But just to prepare people, two minutes -- no
6 longer than two minutes' time. And I'll give the next two
7 people so that you can be prepared.

8 Jeremiah Akin and Genevieve Katz.

9 CHAIRPERSON KYLE: Mr. Rockey.

10 Let me just reiterate, Mr. Rockey. If you have
11 anything in writing or if it's been submitted, just let us
12 know so we can take it under -- otherwise we'll take
13 copious notes.

14 MR. ROCKEY: Good morning. My name's Phil
15 Rockey. I'm from the City of Oakdale. I'm a City Council
16 member -- is that better?

17 My name is Phil Rockey. I'm an Oakdale City
18 Council member. I'm here representing some of my
19 constituents who have many concerns about this process
20 that has been going on. And this item was continued from
21 I believe your last meeting or two. And I'm not going to
22 take up a lot of your time. I'd like to yield my time to
23 some folks here that have a little lengthier presentation.
24 But I just wanted to let you know that there are many
25 people in the valley very concerned about this process.

1 Thank you.

2 CHAIRPERSON KYLE: Thank you.

3 VICE CHAIRPERSON CARREL: Can I just ask which
4 county Oakdale's from?

5 MR. ROCKEY: Stanislaus County.

6 VICE CHAIRPERSON CARREL: Thank you.

7 Jeremiah Akin.

8 MR. AKIN: Hi. My name is Jeremiah Akin. I'm
9 from Riverside, California; Riverside County.

10 I'm here today to call on you to decertify all of
11 Diebold systems in use within the state.

12 The extent of Diebold's crimes is clear. One or
13 two installations of uncertified software can be passed
14 off as a mistake. But to have 100 percent of the machines
15 running uncertified software clearly shows that the
16 company believes they have the right to violate the law at
17 will. A company like this cannot be allowed to count
18 votes in our state.

19 A fine is not a sufficient consequence -- I'm
20 sorry. A fine is not a sufficient consequence for the
21 complete flaunting of the law performed by Diebold. If
22 you only fine Diebold, you will be letting the people of
23 California know that a voting machine vendor can get away
24 with running uncertified software for a price.

25 It will not be enough for Diebold to say, "I'm

1 sorry. But trust us. This won't happen again." Too much
2 trust was put in Diebold in the first place, and we all
3 have seen how they abused that trust.

4 If this panel does not decertify Diebold's
5 machines, then they will be showing the state that not
6 only do we not have the proper policies and procedures to
7 protect our elections, but that when a company
8 unquestionably violates those procedures they will still
9 be allowed to be intimately involved in our election
10 process.

11 If this panel does not decertify Diebold's
12 machines, then they will be sending a clear message to the
13 state: When a company violates the law, they will be
14 allowed to count our votes without us being able to watch.

15 Thank you.

16 CHAIRPERSON KYLE: Thank you.

17 (Applause.)

18 VICE CHAIRPERSON CARREL: We would ask that you
19 limit applause. We are going to be here long enough. And
20 the applause will only keep us here longer.

21 Genevieve Katz.

22 MS. KATZ: I'm Genevieve Katz From Alameda
23 County.

24 People in Alameda are very concerned about what's
25 going on. We would like to have a more public

1 announcement of what is going on. We are distressed that
2 the 2004 elections will be going through without certified
3 machines or questionable machines.

4 I cede the additional time to Jody.

5 Thank you.

6 VICE CHAIRPERSON CARREL: Neil Hudson, Jim March,
7 Steve Kerman.

8 MR. HUDSON: My name is Neil Hudson from
9 Stanislaus County. I am very concerned that we have in
10 this room the ability to have absolutely -- the integrity
11 in the voting machines that we're adopting here in
12 California.

13 My question is: Research has been done into the
14 ability of these machines to be hacked by the computer
15 people at Cal Tech and MIT, John Hopkins. Why hasn't the
16 Secretary of State asked these witnesses to come in and
17 testify for the integrity of these machines and its
18 software? When they have -- the Secretary of State has
19 the right to hire three independent consultants to come in
20 and have those paid for by the voting machine companies.
21 And they are people who know computers and software much
22 better than some of the testimony I've heard at these
23 committees. Why hasn't this committee had those experts
24 coming in and testifying to these machines?

25 Thank you. I'd like to cede the rest of my time

1 to Jody Holder.

2 CHAIRPERSON KYLE: Thank you.

3 VICE CHAIRPERSON CARREL: I should just say, you
4 get two minutes. There's no ceding time. You get two
5 minutes.

6 So Jim March, Steve Kerman, Kim Alexander.

7 MR. FINLEY: Well, May I -- I'd like to make a
8 procedural objection.

9 The reason --

10 VICE CHAIRPERSON CARREL: I'm sorry. We don't --
11 Mr. Finley, we're not recognizing anyone from the
12 audience.

13 And Mr. March is now recognized.

14 MR. FINLEY: I would encourage though as we're
15 speaking to use time that's been ceded.

16 MR. MARCH: Members of the Panel, I would like
17 Diebold Corporation or Diebold Election Systems, as they
18 will, to present their most technical person present for a
19 few questions.

20 VICE CHAIRPERSON CARREL: I'm sorry?

21 MR. MARCH: I would like Diebold -- there are
22 Diebold employees and representatives here in the
23 audience. I would like them to present their best techy,
24 whoever's present, to answer a couple of questions.

25 VICE CHAIRPERSON CARREL: This is public comment.

1 This is not time for the public to question either us
2 or --

3 MR. MARCH: Mr. Carrel, Mr. Jody Holder did some
4 research on the rules behind these voting systems panels'
5 procedures. This is an adversarial process. There's a
6 process by which people can call witnesses, present expert
7 testimony, and ask questions.

8 With all due respect, you guys have been treating
9 this as a city council meeting when it is something closer
10 to a court hearing.

11 CHAIRPERSON KYLE: Mr. March, let me just correct
12 you.

13 One, this isn't an adversarial procedure.
14 There's no state law, state regulations that requires it
15 in that format. We're taking public testimony. As a
16 matter of fact, I have your letter from yesterday, which I
17 was going to make several requests from. Specifically the
18 whole letter will be entered into the record. But we're
19 not going to put Diebold up here and start cross examining
20 them. That's not the purpose of this panel, it hasn't
21 been in the past, and we're not going to start today.

22 MR. MARCH: Okay. I formally object to that.
23 But that's fine with me. I can't stop you right here.

24 I would then like to submit one more copy of that
25 same sheet with several of the questions circled that I

1 believe are the most important and can be presented today
2 to any Diebold technical sales rep or someone like that,
3 who's probably in the audience -- I see hiding in the
4 corner.

5 Let me do that. Hold on.

6 It's a subset of the questions.

7 I'd like to ask the Panel to ask questions today
8 before the public on those issues.

9 CHAIRPERSON KYLE: Duly noted.

10 MR. MARCH: Thank you very much.

11 VICE CHAIRPERSON CARREL: Steve Kerman, Kim
12 Alexander, Joseph Holder.

13 MR. KERMAN: Hi. I'm Steve Kerman. I'm from
14 Palo Alto.

15 For 15 years I was President of Genesis
16 Microsystems Corporation, which is a major supplier of
17 software development tools to -- for development of
18 embedded computer systems, such as the Diebold system is.

19 So I'm very, very familiar with how systems like
20 this operate, how they're developed and designed and so
21 forth. And I can say with a great deal of authority that
22 even a system like this, if it's perfectly designed so
23 it's hack proof and so forth, there are many ways that you
24 can compromise a system like this. For example, just a
25 complete brute force attack on it, take a machine, take it

1 apart, reverse engineer it. You can develop a little box
2 the size of a paperback book that you could go into
3 wherever things are stored, load a new program into the
4 machines. You take it apart, clip on to the board, load
5 new programs into the memory on them, go away. The
6 election runs. When the election's over it erases itself
7 and puts it back to the original program, and nobody can
8 ever find out what happened to it.

9 You have to have an audit trail on something like
10 this. Any sort of computer system is compromised. Well,
11 you have to have some kind of a printed audit trail,
12 either a printed ballot that comes out of the computer or
13 marked cards, marked ballots of people who use those, so
14 we can go back and later prove that there wasn't some kind
15 of compromising going on in the election process.

16 So I would plead with you that -- you know,
17 either you do away with the Diebold systems or add some
18 kind of ballot printer or something to them so there is a
19 audit trail so it's possible to go back later and
20 ascertain that in fact the election was conducted fairly.

21 Thank you.

22 CHAIRPERSON KYLE: Thank you.

23 VICE CHAIRPERSON CARREL: Kim Alexander, Joseph
24 Holder, Maureen Smith.

25 CHAIRPERSON KYLE: Kim's next. Ms. Alexander's

1 next.

2 MS. ALEXANDER: Good morning. I'm Kim Alexander
3 with the California Voter Foundation.

4 We urge you to withdraw conditional certification
5 of Diebold's AccuVote TSx machine because the machine
6 lacks federal approval. The grounds for this withdrawal
7 are obvious. The TSx lacks this approval. And California
8 voting system procedures require voting equipment to be
9 federally approved. According to both the Federal
10 Election Commission and Steve Greenman, the state's
11 technical consultant, no final determination of whether
12 the TSx is federally approved has yet been -- approved has
13 yet been made.

14 When a voting system or a component completes
15 federal testing, a federal authority must review those
16 tests and determine whether the system or component has
17 passed or failed. If it passes a qualified number is
18 issued and the system or component is deemed approved by
19 the federal government.

20 No number has yet been assigned to the TSx and
21 there is no guarantee the TSx will be federally approved
22 prior to California's March 2nd, 2004, primary election.
23 Given this uncertainty it would be unwise and possibly
24 illegal for counties to use the TSx.

25 And we're not talking about a couple of machines

1 here. We are talking about 14,000 voting machines that
2 will cost over \$40 million.

3 That four counties would still be planning to use
4 these machines at this late stage despite the lack of
5 federal approval is an indication of how important it is
6 that the Secretary of State intervene and prevent these
7 machines from being deployed in our State. The VSP should
8 not only withdraw conditional certification, but also
9 encourage those four counties, Kern, San Joaquin, Solano,
10 and San Diego, to immediately begin planning to use an
11 alternate system.

12 These counties together comprise 13 percent of
13 California's electorate. That is a huge percentage of
14 California ballots to be put at risk during a presidential
15 election year.

16 As a California voter I have a stake in the
17 ballots cast in my state, not just those of my own county.
18 California voters together will select presidential
19 candidates and vote on a multi-billion dollar bond measure
20 that will impact our state for a generation.

21 Two of the counties in question, Solano and San
22 Diego, are among the nine punch card counties whose voting
23 systems -- may I have another minute? -- were required
24 under federal court order to be replaced. Seven other
25 counties impacted by this court order have made this

1 transition without a crisis.

2 If and when the TSx is granted federal approval
3 we still need to have a substantive public discussion
4 about the unit itself.

5 In closing I would like to read to you the
6 mission statement from San Diego County Department of
7 Elections website, which is quite similar to that of
8 Solano County.

9 It reads: "Under the jurisdiction and direction
10 of the Board of Supervisors, and with the assistance of
11 the California Secretary of State, conduct voter
12 registration and voting processes with the highest level
13 of professional election standards, accountability,
14 security, and integrity, thereby maintaining and earning
15 public confidence in the electoral process.

16 Thank you.

17 (Applause.)

18 VICE CHAIRPERSON CARREL: Joseph Holder, Maureen
19 Smith, Lindsay Vurek.

20 MR. HOLDER: Good afternoon. I'm Joseph Holder
21 or Jody Holder. I'm from Stanislaus County, from Modesto.
22 I had some remarks here. I will formally at this point
23 object that the -- with regard to the time limit. And
24 that might be explained in a minute.

25 Last December 16th, Secretary of State Shelley

1 spoke before this Panel eloquently and passionately about
2 the right of the people to have confidence in the
3 integrity of our voting systems. He told this panel to
4 take our concerns very seriously.

5 Imagine my surprise and disappointment when after
6 he left we were told we would have a maximum of three
7 minutes to speak. That goes against the spirit of what he
8 said and, more importantly, it goes against the law.

9 These hearings are mandated to be held to give
10 interested parties an opportunity to express their views
11 for or against the machine or device under consideration.
12 The regulations say people opposed may testify, have
13 expert witnesses, and introduce evidence. For too long
14 these hearings have been dominated by vendors, both in
15 attendance and in content. It is time the voters'
16 interests came first.

17 Over the last year the Elections Division has
18 heard repeated warnings from the experts in the field of
19 computing about the inherent vulnerabilities of
20 computerized voting systems. The Secretary convened the
21 ad hoc task force and they made some much needed
22 recommendations. Unfortunately that task force was not
23 privy to the studies that have subsequently come out,
24 studies that showed very clearly that the warnings about
25 these machines' vulnerabilities to rough -- and

1 manipulation are all too real.

2 The TSx never should have been certified. The
3 AccuVote TS and OS should be decertified. The state's
4 audit of Diebold shows a disregard for the law, for their
5 contractual duty to the local elections officials, and for
6 the integrity of the voting systems they supply.

7 The very minimum the Secretary of State should do
8 is require Diebold to make the same changes to their
9 voting systems as they are doing for Maryland and Ohio.
10 He should also change the voting procedures of each voting
11 system to address the known security vulnerabilities and
12 requirements of law.

13 Citizens all across this country are awakening to
14 this attack upon the very foundation of our form of
15 government. It appears that expediency and greed are the
16 driving forces in purchasing these computerized systems,
17 not our right to an accurate vote.

18 We are organizing and we will fight for our right
19 to vote with confidence -- we will fight for our right to
20 vote with confidence that our vote was recorded or counted
21 accurately.

22 The more we research the law, the more apparent
23 it becomes that the Elections Division and local elections
24 officials have too long not complied with it. If you do
25 not listen to us in here, then we will take our concerns

1 to the streets and to the courts, if necessary. Rest
2 assured, that if immediate steps are not taken to ensure
3 the integrity of our elections, especially this year's,
4 this movement will grow. The foundation of our form of
5 government has the right to decide who will govern us.
6 When we see elected officials choose expediency over
7 integrity, we will protest.

8 Thank you.

9 CHAIRPERSON KYLE: Thank you.

10 (Applause.)

11 VICE CHAIRPERSON CARREL: Maureen Smith, Lindsay
12 Vurek, Judy Bertelsen.

13 MS. SMITH: Maureen Smith, Santa Cruz County,
14 where our Board of Supervisors and City Council have gone
15 on record requiring a paper -- voter-verified paper audit
16 trail for any election equipment used in Santa Cruz
17 County. That has been transmitted to the Secretary of
18 State.

19 When I first addressed this body in April, I
20 brought up the issue of the corruption of the voting
21 machine companies, Diebold, Sequoia, and ES&S.

22 I was called out of order at that time, which I
23 understand I was out of order at that time. However, I
24 don't believe I'm out of order at this time when I say
25 that more and more information has come out about their

1 corrupt practices. It's very easy on the Internet to find
2 the information.

3 I will quote a very modest quote from an article
4 by Kim Zetter on 10/21/03.

5 "Diebold knowingly created a system that doesn't
6 even have a semblance of security. And then they passed
7 it off to the American public in the name of
8 modernization."

9 I'm asking that you decertify Diebold in all 17
10 counties where they're used and replace this system with a
11 hand-counted paper ballot system, which is the most --
12 which is the most accurate system, that is recommended by
13 both MIT and John Hopkins' study.

14 Thank you.

15 (Applause.)

16 VICE CHAIRPERSON CARREL: Lindsay Vurek, Judy
17 Bertelsen, Dennis Paull.

18 MR. VUREK: I'm from Alameda County. And I'm
19 trying to look for a practical solution out of this. I
20 know that, you know, there's some things that aren't
21 doable. And if you look at Alameda County's procedure,
22 their logic and accuracy procedure, you can see how with
23 small modifications you can have a staged improvement even
24 in the short term, even in possibly March and certainly in
25 November.

1 And, you know, they do -- apparently the Diebold
2 system that they're using does have a printer that they
3 use for their logic and accuracy, as they basically
4 introduce a sample vote in that system. And they first
5 see that there's zero votes. Then they introduce the
6 sample vote, and then they see that that came out
7 accurately. And you can see that if you at the precinct
8 level were to do the verification procedure, that it would
9 be much more difficult to read the system because of the
10 fact that -- and if they also followed the mandate that's
11 in the state code about printing at the end the total
12 votes for that given precinct, and they have done on site
13 the verification procedure, you can see by deduction that
14 you can make this much more difficult to hack an election.
15 Because those paper trails, even though they're not the
16 ultimate voter-verified paper trail that we eventually
17 want, that you -- because you have a precinct total and
18 the fact that you on site verified that the system had
19 integrity, then you have all those precinct paper trails
20 to total against the GEM system total, you know, the
21 automated system that will total everything. And so you
22 have, you know, much less ability to hack the system at
23 that point.

24 I'm not sure if I articulated that right. But if
25 you have any questions or -- you can kind of see.

1 Now, all I have to do is, one, follow the state
2 code and print the total at the end. They have the little
3 difficulty of instead of at the main central office doing
4 the procedure -- because you could see if it's done the
5 night before, they do the logic and accuracy test, you
6 could have a hack between when all the systems are
7 transported there. So it presents a little problem of
8 doing it at the precinct level. But the printer's right
9 there.

10 And I don't want to belabor this, but do you
11 think I made myself clear on this?

12 VICE CHAIRPERSON CARREL: Thank you.

13 MR. VUREK: And that's much easier to do, you
14 know, in the very short term.

15 VICE CHAIRPERSON CARREL: Thank you.

16 CHAIRPERSON KYLE: Thank you.

17 VICE CHAIRPERSON CARREL: Judy Bertelsen, Dennis
18 Paull, T.S. Siegel.

19 MS. BERTELSEN: I'm Judy Bertelsen from Alameda
20 County.

21 I submitted some -- a written statement by
22 E-mail. So I'll just -- I won't read the whole thing, but
23 I'll just say that I too would like to ask you to
24 decertify Diebold. I'm concerned not only with the touch
25 screen machines, but also with the Diebold equipment

1 that's used -- the GEM software that's used to tally the
2 votes. I think we've got problems in all these areas.

3 We definitely need a voter-verified paper audit
4 trail. But we need that trail not to just sit there for
5 possible recounts, but we need a good timely checking of
6 these paper votes to see that the -- whatever we're taking
7 as the totals seem to fit with what a sample of the county
8 the paper ballot shows.

9 And that's in the Elections Code. What we're
10 doing now is printing -- at least in Alameda County what
11 happens is they print out a selection of what's in the
12 computer, count it up and, surprise-surprise, it always
13 fits with what's in the computer. So that's not really
14 adequate to meet the -- it seems to me, the intent of the
15 Elections Code.

16 So I hope also that we will be able to have
17 something meaningful in place for March and November.
18 It's really not reassuring to the voters if we only can
19 expect that something may be sensible in 2006, 2005.

20 Thank you.

21 CHAIRPERSON KYLE: Thank you.

22 (Applause.)

23 VICE CHAIRPERSON CARREL: I would ask, again,
24 that we hold applause, because it keeps getting up every
25 time.

1 Dennis Paull, T.S. Siegel, Lowell Finley.

2 MR. PAULL: Good morning. I'm Dennis Paull from
3 Half Moon Bay in San Mateo County.

4 I'm greatly concerned about any wireless
5 connectivity, both with electronic voting machines and
6 county election central computers. It would appear that
7 the only justification for wireless connections are to
8 speed up the vote reporting and to make it easier for poll
9 workers to supply raw data to the county staff. With this
10 we are asked to open a huge security hole accessible to
11 anyone in a car with a laptop and knowledge of how the
12 voting machines work.

13 Please, a small decrease in vote reporting time
14 is not worth the insecurity of our elections.

15 CHAIRPERSON KYLE: Thank you.

16 (Applause.)

17 MS. SIEGEL: Hi. My name is T.S. Siegel. I'm
18 from Lake County. I'm an ordinary non-techy citizen.

19 However, I have heard of source codes that the
20 programmers create. And I'm here to express my deep
21 disturbance over all computer systems and the Help America
22 Vote Act in general, because I learned about this incident
23 in Nebraska where the losing Democrat -- I believe this
24 was 2002 -- the losing Democrat contested the winner, who
25 I believe was Chuck Hegel, in court, and because Chuck

1 Hegel either -- was connected to the corporation that made
2 the voting machines. And I believe he lost again in court
3 contesting this election because the source codes are
4 secret and they're protected by globalization agreements,
5 which are -- of course is a lot vaster problem than anyone
6 here alone could deal with. You know, these are
7 international globalization agreements that make the
8 source codes private.

9 So that the Court in Nebraska said that the Court
10 could not examine the source codes, which was what the
11 losing Democrat wanted examined. And so I -- and many
12 others are profoundly disturbed by the whole process,
13 starting with the Help America Vote Act, and being told
14 that computers are the update and being sold on this as
15 progress, as I believe many other people have
16 demonstrated.

17 Thank you.

18 CHAIRPERSON KYLE: Thank you.

19 VICE CHAIRPERSON CARREL: Lowell Finley, Mark
20 Dyken are the last two that I have on this item number.

21 MR. FINLEY: Good morning. I'm Lowell Finley.
22 I'm an attorney from Alameda County.

23 I would like to second the remarks that were made
24 earlier about the importance of this Panel and the
25 Secretary of State exercising the full authority of the

1 office to retain the maximum number of technical
2 consultants for the review of the various voting systems.

3 The use of a single consultant is inadequate.

4 And given the importance of this, I think that bringing in
5 at least the additional two consultants that are provided
6 for by statute is critical. And their efforts should be
7 focused, I believe, exclusively on questions of security
8 of the vote, of the vulnerability to hacking from outside
9 or to manipulation from inside the results of elections in
10 the Diebold voting systems, but also those of the other
11 vendors that come before this Panel.

12 Specifically with request -- with respect to Mr.
13 Freeman, who is the technical consultant who the Secretary
14 of State's office has been working with, I believe it's
15 appropriate for the public to know in specific terms what
16 Mr. Freeman's qualifications are as an expert in this
17 field. I'm not questioning them. What I'm asking for is
18 a public disclosure at this time. I think that would be
19 appropriate.

20 And I also believe it's important that the line
21 of questioning that Mr. Carrel began prior to the opening
22 of the public comment period should be continued by the
23 Panel; and that is to focus again specifically on voting
24 security questions as opposed to functionality questions.
25 I believe that some of your remarks did ask specifically,

1 Mr. Carrel, about security, about vulnerability to
2 hacking. And I don't believe the answers were responsive.

3 I think this panel and the public need to know
4 what steps specifically Mr. Freeman has taken to test the
5 voting system hardware, the TS hardware, the TSx hardware,
6 as well as the various versions of GEMS used on the
7 various Diebold equipment throughout California,
8 regardless of whether they've received federal or state
9 certification; what specific steps have been taken to
10 determine whether there is vulnerability to hacking or to
11 internal manipulation in those systems, and whether there
12 is any malicious code hidden within the software or
13 firmware on those systems.

14 Thank you.

15 VICE CHAIRPERSON CARREL: Thank you.

16 Mark Dyken,

17 MR. DYKEN: Good morning. My name is Mark Dyken.
18 I'm from Angels Camp in Calaveras County.

19 And the day that I turned 18 years old and got
20 the right to vote was a really exciting moment for me.
21 And I've never missed an opportunity to vote in the 27
22 years since then. I voted in every single election that I
23 could.

24 And this entire process of turning over my vote
25 to a computer is destroying my confidence in that

1 cherished right that I have in participating in this
2 democracy.

3 And the entire process of -- the fact that
4 someone who's on this panel has to excuse themselves
5 because they have a conflict of interest, it just
6 frightens me as a voter and a citizen. And I'm really
7 concerned.

8 When I go to vote now in my small town and I hand
9 my ballot to the elderly volunteers who take their time to
10 be there and count them, I have faith. I turn this over
11 to this corporation, and I'm telling you I lose my faith
12 in the process.

13 And this process -- I get choked up thinking
14 about it because it means a lot to me. And I feel like
15 it's just being robbed from me as I watch this whole thing
16 happen. And I'm deeply concerned about it. I have a lot
17 of friends who feel the same way. And I have seen nothing
18 that would make me feel any different about it. I haven't
19 seen anything -- I've read a lot about it -- that would
20 make me feel confident in this process or in these
21 computerized voting machines.

22 I just don't see any reason to change what's
23 happened. And I don't see any reason to put faith in
24 something -- I work with the computers in my line of work
25 too, and they fail all the time. And I haven't seen

1 anyone who can assure me their computer would not fail me
2 in this most important of processes that make me feel like
3 I belong in this democracy and make me feel like I have a
4 say in who's going to make some of the most important
5 decisions in my life.

6 So I would urge you to pay more attention to the
7 people instead of the corporations that are trying to push
8 something that I see no value in. And I know a lot of
9 people feel the same way.

10 Thank you.

11 CHAIRPERSON KYLE: Thank you.

12 VICE CHAIRPERSON CARREL: Thank you.

13 I just want to ask if there's any more comment on
14 this that we haven't received.

15 You'd have to fill out a card before we -- you'd
16 have to fill out a card and we will recognize you. But we
17 will take further comment on this item if people fill out
18 a card, and then I can call on them.

19 So are there more cards?

20 If people can stand in a line and tell me what
21 their name is, I'll find their card.

22 There are a number of people who put Item No. 2
23 down. I have a feeling this was the issue, put the
24 wrong -- either want to speak on more than one item or
25 simply put the wrong item number down.

1 Ma'am, if you filled out a card, please --

2 MS. ROBERTS: I did. I put in 1 and 3. So I'll
3 make both remarks now to save you guys time.

4 I'm Linda Roberts. I'm --

5 CHAIRPERSON KYLE: Your name?

6 MS. ROBERTS: Linda Roberts. I represent the
7 Peace & Freedom Party from Sacramento County. I'm the
8 treasurer for their congressional candidate.

9 We feel the need, for our own confidence in the
10 system, to have a paper verification system that's
11 certified and that can be audited.

12 In addition, I do volunteer legislative advocacy
13 for Californians for Disability Rights. And we need a
14 voting system. I have a disability where I can't use the
15 punch card very well. So we need to have a system that's
16 accessible, that doesn't require us to take an attendant
17 in with us.

18 If you want to have results of a test where
19 disabled people tested voting machines, you can check with
20 Mark Wilkerson at the Sacramento County, because we did
21 have a bunch disabled people test the various machines.
22 Some of them I found real easy to use, but friends of mine
23 couldn't press hard enough to get them in use.

24 So keep disability issues in mind.

25 Thank you.

1 VICE CHAIRPERSON CARREL: Thank you.

2 Mr. Kibrick, I know I have your card here. Let
3 me find it in a second.

4 MR. KIBRICK: Okay. My name is Robert Kibrick.
5 I'm a voter in Santa Cruz County. I also serve as the
6 Director of Science and Computing for the University of
7 California Observatory.

8 I'm here today, however, speaking as a private
9 citizen. I submitted a letter to this panel, which you
10 should all have copies of. I won't go into that in
11 detail, except to hit the highlights, as others have
12 mentioned, several studies, Johns Hopkins, Marylinda,
13 SAIC, Ohio Compuware, all that would then invite numerous
14 security weaknesses, not only with the Diebold software,
15 but with other electronic voting machines.

16 I urge this panel at a minimum to require all of
17 the vendors to upgrade their machines in California to
18 address those risks. Whatever is being done for Maryland
19 and Ohio should be done here.

20 Furthermore, the reports of the state consultants
21 that described the process by which these security issues
22 are a result should be released to the public. The State
23 of Ohio released the entire Compuware and Inco Sentry
24 reports. The State of California should do no less.

25 I'd like to follow up on Mr. Holder's comments

1 regarding this being a public hearing. California
2 Elections Code Section 19204 specifically states that
3 "there shall be a public hearing to give persons
4 interested an opportunity to express their views for or
5 against the voting machine or devise." In order for that
6 to not be a hollow process, voters and members of the
7 public need to have access to information. When we ask
8 for technical information from the vendors, our questions
9 go unanswered.

10 We should have access to the reports of your
11 staff that go to this Panel. We should had come in here
12 with the same information that you have so that we can
13 intelligently debate and discuss these issues.

14 So I call upon this Panel to open up this
15 certification process to public scrutiny so that members
16 of the public can participate in a meaningful way and not
17 simply come up here and not have access to the
18 information. They need to make an informed case, either
19 for or against these machines.

20 I'd like to follow up on the comments of the
21 previous speaker, whatever solutions here need to address
22 the concerns of the disabled.

23 And I have a specific question I would like you
24 to ask the Diebold representatives who are here today.
25 They have claimed that their machines do not have software

1 configured to support a wireless link. However, their
2 technical documents describe the presence of a specific
3 wireless land card in PCMCIA slot number 1.

4 The questions I would like you to ask Diebold:

5 Are the machines shipped -- the TSx shipped to
6 California, do those include a wireless land card in that
7 slot? If so, what is to prevent Diebold from enabling the
8 use of that card in subsequent software releases?

9 Finally, there is federal legislation pending in
10 the Congress that, if passed, states no voting system
11 shall contain any wireless communication devise at all.
12 If that legislation passes the Congress, and the TSx
13 machines include this wireless land card, what action will
14 this panel take to make sure that these machines comply
15 with that federal legislation?

16 Thank you.

17 CHAIRPERSON KYLE: Thank you.

18 VICE CHAIRPERSON CARREL: There's your card.

19 Mr. Reynolds.

20 MR. REYNOLDS: My name is Jim Reynolds and I'm
21 from Newport Beach. And I want to thank you for giving us
22 the opportunity to speak today.

23 The whole basis of elections and democracy are
24 formed on trust. All basis of corporations I believe are
25 based on trust in transactions or business, to make a

1 profit.

2 I don't think any vendor here is setting out to
3 control or manipulate or destroy an electoral process. I
4 also do not think that the public is so involved that they
5 don't have a say to -- the technology doesn't answer every
6 question. The election process was going to require
7 processes which actually detail the backup of the security
8 of the systems.

9 Any vendor who provides a technology needs to
10 integrate that process in an economical way.

11 I'm scared about doing this.

12 Processes without education for both the public
13 and for the staff worker is going to make it so that the
14 systems are insecure and incomplete. And I think one of
15 the previous gentlemen who spoke that we really need to
16 have openness, openness to the code, openness to the
17 hardware, openness to the public, and openness to the
18 electoral process. And that's what I would encourage you
19 to do. Make sure, no matter Diebold or any vendor,
20 complies with that.

21 Thank you.

22 CHAIRPERSON KYLE: Thank you.

23 MS. EDEN: Joyce Eden. You have my card.

24 CHAIRPERSON KYLE: I don't have a card.

25 MS. EDEN: I put Item No. 3 because I didn't

1 know --

2 CHAIRPERSON KYLE: Okay.

3 MS. EDEN: Thank you.

4 I live in Cupertino in Santa Clara County. And
5 we have widespread concern about this issue. The
6 integrity of our elections is in your hands at this point.
7 And I'm sure that -- I'm guessing that you would all agree
8 that I need and have the right to have confidence that my
9 vote will be counted as I intended it to be registered.

10 Confidence in the vote is fundamental to a
11 democracy. I've been voting in every election, with few
12 exceptions, since 1968. I take it very seriously. The
13 last election I walked into my precinct, saw a voting
14 machine -- computerized voting machine, Sequoia, I
15 believe, and I had to walk out.

16 I have been disenfranchised. I have the right to
17 vote with confidence that my vote will be counted as I
18 intended. I do not have that right right now. It has
19 been taken away from me.

20 The issue is deep and more fundamental than the,
21 quote-unquote, certification. The issue is secrecy of
22 individual votes and complete transparency of the process.

23 If computerized touch screen voting is to be used
24 in California, I ask that the Australian model for
25 computerized voting, which uses software developed and

1 owned by the Country of Australia, be used. It is not
2 complicated code. It is simple.

3 There is no compelling or necessary reason that
4 the State of California cannot also do this. We certainly
5 have the computer programmers here in California who could
6 easily implement this.

7 The software and the code should be public
8 property, not private proprietary property. Privatization
9 and outsourcing of electronic touch screen voting has
10 already turned out to be problematic in multiple ways and
11 probably has ruined many elections already. There are
12 other options.

13 By the way, regarding Diebold Systems, an article
14 in the summer of '03 in the Boston Globe stated, quote,
15 "Representatives from Diebold which sells both systems
16 told the council that Boston was better off with the
17 optical scanners. John Silvestro, President of the
18 company, said the optical scanning system reduces lines at
19 polling places and helps preserve the integrity of
20 elections by leaving a paper audit trail. He also said
21 the touch screen system would cost the city about six
22 times as much money."

23 You can reference that in the Boston Globe.

24 There are precincts in San Francisco that use an
25 optical scan system which indicates space in which to

1 connect, draw a line rather than fill in a bubble, in
2 order to register your vote. This former enables the
3 voter's intent to be easily recognized.

4 Please note this critical point: Quote, "A lot
5 of our problems stem from the fact that for historical
6 reasons most experts in electronic technology are not
7 especially well versed in computer security." David
8 Diehl, Professor of Computer Science, Stanford University.

9 If computerized touch screen voting is to be used
10 in California --

11 VICE CHAIRPERSON CARREL: You've gone --

12 MS. EDEN: Okay. Just give me one little -- What
13 I'm asking for is a voter-verifiable paper printout to be
14 used as the ballot, not merely as an audit trail, because
15 audits in themselves have varying triggering mechanisms.
16 And how is one to even know whether to challenge an
17 election or not and on what basis if there is no paper
18 trail?

19 Thank you.

20 VICE CHAIRPERSON CARREL: Ma'am, I don't have a
21 card for you. So you can fill one out before you leave.

22 CHAIRPERSON KYLE: Come over to this table.

23 MS. McCORMACK: Good morning. I'm Conny
24 McCormack, the Registrar/Recorder/County Clerk for Los
25 Angeles County.

1 I would like to at this point address number 1,
2 and then later I would like to go to Topic No. 2. But
3 I'll keep my remarks short on number 1. I would like to
4 address some comments that were made regarding multiple
5 versions of Diebold software in our county.

6 The explanation was that we've been using Diebold
7 for early voting since November of 2000. And because
8 we're a punch card county and were through October of
9 2003, we found that our early voters, who we had suggested
10 to all voters to take their sample ballot and mark it and
11 bring it with them to the polling location or to the early
12 voting, were marking it by the number, which is a common
13 occurrence in Los Angeles and will continue to be as we
14 move into the Inka Vote System, which is similar.

15 And they had been complaining that they had
16 marked a number and couldn't find it easily on the screen.
17 So we had requested that Diebold make that change for us.
18 And they did that, which tremendously helped our voters
19 with 135 candidates in the recall election.

20 They were able to mark their sample ballot. If
21 they want number 12 or 18, 5 or whatever, go right in and
22 cast the vote very quickly, which really helped. So this
23 was a voter improvement in the software. Because we
24 didn't roll out all of our units for the October of 2003
25 early voting, we still had some units that we used in

1 November of 2002 in our warehouse, which did not have this
2 feature on the software because it was just new for that
3 election. So that's the explanation of having multiple
4 software versions.

5 However, I'd also like to mention that L.A.
6 County is in full compliance with Elections Code Section
7 15001. And that requires all counties at E minus seven to
8 submit or vote tabulation software to the Secretary of
9 State for you to put it in escrow. We did this on --
10 right before the -- as we always do, but right before the
11 recall election, seven days previous, for both the Diebold
12 software that we used for that election and for our MTS
13 micro-tallying system that we used to tabulate our punch
14 card machines.

15 So the Secretary of State has had and will have
16 through Elections Code Section 15001 through April 2004 in
17 your possession the software that we used.

18 So there were some questions that Mr. Carrel and
19 Mr. Soriano raised a little bit earlier: How would you
20 know what other changes might be in the software? And I
21 think you addressed that to your consultant. Because you
22 have that right now and it's a requirement for all
23 counties to have that, you could go in there and look at
24 that and know whether there had been any other changes
25 made to the software. So you do have that in your

1 possession and will continue to have it.

2 I would also like to mention that I have had some
3 concerns regarding potential double standards with Diebold
4 being examined at this level. Because two years ago the
5 Friday before the primary election in San Francisco, I was
6 on the phone, as was John Mott-Smith and several others,
7 with Tammy Haygood, who was the registrar of voters at
8 that time in San Francisco. They had just then discovered
9 that they were not able to tabulate. Because of the
10 modified closed primary, they had complications, as we all
11 did, in having to change our programs to meet that new
12 requirement for the primary. And they -- in their testing
13 their systems were not operating. They had to fly in ES&S
14 technical software expert in that weekend, and the
15 software was changed that weekend. And the Secretary of
16 State's office had full knowledge of it. And they had
17 the -- I have to ask what steps were taken both prior to
18 knowing what had been submitted to see whether or not it
19 was accurate and then post to evaluate whether or not it
20 counted accurately. So I think that should be on the
21 record as well.

22 I would like to make some other comments, but
23 I'll wait until we get to the vote verified.

24 CHAIRPERSON KYLE: Thank you.

25 MR. PHILLIPS: Hi. I'm Mark Phillips. I just

1 filled out a card. I said I wanted to speak Items 1, 2
2 and 3.

3 VICE CHAIRPERSON CARREL: I have to apologize. A
4 lot of these were misfiled. So --

5 MR. PHILLIPS: All right. I'm from San Luis
6 Obispo County. I'm representing a group called San Luis
7 Obispo Citizens for Open Voting. We have some serious
8 concerns, as most of the people in this room do, about
9 what's going on here with our vote. We used to kind of
10 take that for granted, and we no longer do. And that's a
11 good thing. It needs to be scrutinized very carefully.

12 One of the things that is very clear to me is
13 that with all the problems that Diebold has had with
14 uncertified software being in every machine in California,
15 it -- I'm not sure that Diebold's any better or worse than
16 the other companies that might be here if they had the --
17 they won the contract. The point is that I don't think
18 the public should be forced to accept faith-based voting.
19 I think --

20 (Applause.)

21 MR. PHILLIPS: We need to have this process be as
22 totally open and transparent as you can possibly imagine.
23 And if there's somebody that comes along with an idea that
24 makes it more open and more transparent, then you need to
25 adopt that. Having for-profits companies provide software

1 that is secret because of proprietary arrangements is just
2 not acceptable.

3 The Australians -- as a previous speaker
4 mentioned, the Australians managed to do this. Although a
5 private Australian company designed the system, it was
6 based on specifications set by independent election
7 officials who posted the code on the Internet for all to
8 see and evaluate. What's more, it was accomplished from
9 concept to product in six months.

10 They also based it, instead of on Windows, which
11 is another proprietary operating system, they based it on
12 Linux -- whatever it is -- which is an open-source
13 operating system. So they've got a system that is open to
14 the public. It's going to endear a lot more confidence
15 than anything that's held secret as we currently have now.
16 So we have to go with that. We just have to.

17 As far as the paper ballot goes, that's also
18 something that's absolutely required. The average voter
19 is not a computer scientist. And even if you could design
20 a system that a computer scientist could say with absolute
21 certainty it couldn't be hacked -- which I don't believe
22 is possible. But even if you could, you shouldn't have to
23 be a computer scientist to have confidence in your system.
24 An average voter needs to have confidence. And if an
25 average voter can see a paper copy of his ballot and leave

1 it in the ballot box, then he's going to know that at
2 least the ability to have a recount exists. And also for
3 audit purposes.

4 Now, one system I've seen that does this very
5 well and it answers a lot of the questions for disabled
6 voters and such is a touch screen machine that doesn't
7 count or tally votes itself. All it does is print out a
8 machine-generated optical scan ballot, and that that
9 ballot is read by an optical scanner and kept on the
10 premises. And that ballot gets to be verified by the
11 voters.

12 So that seems to address all of the issues that
13 the people who tout touch screen machines are advocating.
14 It certainly does have a lot of the advantages and we need
15 to pay attention to those. But you don't have all the
16 downside of this black box that we don't have any faith
17 in.

18 So those are my comments at this point.

19 Thank you very much.

20 CHAIRPERSON KYLE: Thank you.

21 VICE CHAIRPERSON CARREL: Thank you.

22 (Applause.)

23 MS. RIDER: Marsha Rider. I'm both 1 and 2.

24 I'm a registered California voter, and I've
25 driven a long distance to attend this meeting, as have

1 many of us here, from Carlitos in Santa Cruz County.

2 Why did I expend such effort to be here this
3 morning? Because I'm scared and angry. Bad enough that
4 we will lack a voter-verifiable paper trail for the 2004
5 elections. I'm horrified and disgusted at the revelations
6 of Diebold's unworthiness, to put it mildly, to conduct
7 business in California.

8 And if the news reports are to be believed, the
9 Tri-Valley Herald to be specific, I'm fearful that those
10 whom you are obliged to trust to protect the security of
11 our voting processes may in the end betray the voters of
12 California, using the excuse of expediency, rather than
13 adhering to laws and regulations that will assure the
14 electorate that the integrity of our vote is the rule to
15 guide the conduct of California elections.

16 The regulations are there, to cite the
17 abbreviated Form 3, 19205: The system shall be safe from
18 fraud or manipulation. Yet from two independent studies
19 we know that at least four vendor systems are not safe
20 from fraud and manipulation.

21 19222: The Secretary of State shall review
22 voting systems periodically to determine if they are
23 defective, obsolete, or otherwise unacceptable.

24 19200: The Secretary of State shall not approve
25 any voting system unless it fulfills the requirements of

1 this code.

2 Please go the distance, no matter what it takes,
3 to ensure our elections are accurate and secure. We, the
4 California electorate, will be watching. The rest of the
5 country is watching.

6 Thank you for the opportunity to express my views
7 on this critical issue.

8 CHAIRPERSON KYLE: Thank you.

9 VICE CHAIRPERSON CARREL: Thank you.

10 (Applause.)

11 MS. GOODWIN: You have my card. My name is
12 Barbara Goodwin. I'm from Santa Clara County.

13 I have to echo what my good friend Joyce "Not For
14 Sale" Eden has recommended to the panel about
15 transparency. But about the only thing that should be
16 secret is the actual person putting the mark to the paper.
17 The rest of it should be transparent. And if it's not,
18 it's going to be a screwed-up election.

19 They just had problems in Florida recently,
20 within the last couple weeks, Broward County again. I'm
21 sure you've seen it in the paper. A bad election. And so
22 recent.

23 Thank you.

24 CHAIRPERSON KYLE: Thank you.

25 VICE CHAIRPERSON CARREL: Thank you.

1 MS. HENCH: I'm Deborah Hench, San Joaquin County
2 Registrar of Voters.

3 And I've heard a lot of things here today. Most
4 of them are misconceptions of what happens at the election
5 office. We have integrity. And we do logic and accuracy
6 tests on all units. There is no wireless connection. We
7 don't do on-line voting. There is no connections to our
8 system. It's a stand-alone system. It's a Diebold
9 system, it is true. But in the whole process of canvass
10 you should know that when the polls open there is a zero
11 printout of all votes cast on the units. There is a
12 printout at the end of night of all votes cast on each
13 unit.

14 VICE CHAIRPERSON CARREL: We cannot have comments
15 from the audience please.

16 MS. HENCH: And they all have serial numbers to
17 go back to each unit, which we track along with serial
18 numbers to each unit, to each polling place.

19 In the canvass we use those documents to verify
20 the votes, by the statement of votes, the number of people
21 who signed the rosters. And that's part of the canvass.
22 That's just standard operating procedures.

23 You should also note that votes have been counted
24 by computers since the 1970s. A ballot written in paper
25 is great. However, a voter does not complete them

1 accurately. We have many times the voter over-votes.
2 They mismark, cross out. You can't define exactly what
3 their intention was. One of the great things about touch
4 screen voting was it stopped over-voting, it only allows
5 one vote or, depending on if the race is a multiple-post
6 office.

7 We went to this, not lightly, but because
8 printing costs escalated. I've heard someone say
9 something about decertifying Diebold and decertifying
10 touch screens.

11 Should you do that, you will not have election
12 results election night from San Joaquin County. You will
13 not have election results probably until after the 28
14 days.

15 CHAIRPERSON KYLE: Please hold your comments and
16 show the speaker the same respect all the other speakers
17 have had.

18 Thank you.

19 MS. HENCH: The costs will be astronomical. And
20 you're saying that that's fine. But you've
21 disenfranchised many more voters than the ones here by
22 doing that. And the candidates themselves will be
23 disenfranchised. And you also must understand, the
24 Secretary of State was elected by the systems that you are
25 trying to decertify.

1 Thank you.

2 CHAIRPERSON KYLE: Thank you.

3 MS. CLARK: Hi. My name is Megan Clark, and I'm
4 an elected official from Marin County, and most recently
5 the president of the Board of a large sanitation agency.

6 I also spent -- I'm a retired programmer analyst,
7 and I've spent 17 years working for the County of Marin in
8 many different applications -- voter registration,
9 election results, and criminal justice systems. And so
10 this is my background. I also have been a poll worker and
11 I've helped disabled to vote in our elections.

12 So I'm pretty -- you know, I'm a techy. So--
13 and a concerned citizen.

14 And I know that as a member of a board you can
15 get very, very overwhelmed by details and technicalities.
16 And the bottom line is that, from my years of service, the
17 software and hardware to count votes can never be
18 proprietary or secret, because we have gone to the heart
19 of our democracy when we do this. There are too many
20 ways -- Genesis, Microsystems, and several technical
21 people can go into detail about how easy it is to inform
22 the vote, whether or not a sample's taken at the front or
23 the rear. It's very, very easy to tamper with these
24 results, and in such away that we can never get our vote
25 back because the votes to overturn the votes are now taken

1 electronically.

2 Also, to say that any system that you put in
3 place must have an audit trail, a paper audit trail. The
4 County of Marin has one. We have AccuVote. But we also
5 keep audit trail -- a paper audit trail, which is
6 rigorously counted and recounted.

7 And Mike Smith runs one of the best operations in
8 the State of California. Easy to do actually -- I mean
9 not that easy, but a good thing to do.

10 I also wanted to say that I'm a political junky
11 and I'm very corny when it comes to one person, one vote.
12 No matter how apathetic someone may be, at least they've
13 had the opportunity to vote. No matter L.B.J.'s ballot
14 stuffing or the debacle in Florida, that is minute
15 compared to what's possible with computerized proprietary
16 software.

17 Also, I wanted to say that I am an auntie of a
18 young man who very possibly will be going to Iraq in July
19 so fight for freedom and democracy. And it would be a
20 shame to have him lose his life or be injured fighting for
21 something which we no longer have in the United States.

22 Thank you.

23 CHAIRPERSON KYLE: Thank you.

24 (Applause.)

25 MS. WHARFF: Marsha Wharff, Mendocino County

1 Assessor/Clerk/Recorder. And as County Clerk, I'm the
2 Registrar of Voters for Mendocino County.

3 I would just like the panel to consider
4 separating the optical scan portion of Diebold from the
5 touch screen portion of Diebold. I think they're two
6 separate issues. And I think that -- we are not a touch
7 screen county as yet. We are an optical scan county. And
8 virtually every county in California is required to
9 conduct logic and accuracy tests prior to the election as
10 well as a one-percent manual recount after the election.

11 I'm very heartened to hear that this many people
12 are really concerned about how their vote's getting
13 counted. And I would invite them to contact the registrar
14 of voters in their county or the election official in
15 their county to watch the process. California has the
16 most open process I believe in the United States as far as
17 conducting elections.

18 Our processes are all open to the public. As far
19 as our testing procedures, we invite the media in to do
20 the testing and any other groups that want to watch it as
21 well. We invite them in to watch our canvass and our
22 manual recount. And I think that some of the complaints
23 that we've heard today would be dispelled if people
24 actually watched this down at the registrar of voters
25 offices.

1 I am one of the few people in the state as far as
2 election officials are concerned that are interested in
3 having the voter-verifiable audit trail, and I'll speak to
4 that issue when that comes up.

5 But I do think that there's a difference between
6 touch screens being certified and optical scan being
7 certified, as optical scan already has the paper trail.
8 And the proof in every county to the voters, that it's
9 working accurately currently.

10 Thank you.

11 CHAIRPERSON KYLE: Thank you.

12 (Applause.)

13 MS. WEST: My name is Ann West, and I'm just a
14 citizen, taxpayer, and a teacher.

15 My name is Ann West. I'm from San Bruno,
16 California, which is in San Mateo County. And we have
17 great regard for Mr. Slocum.

18 But I've been doing a lot of research about the
19 company who are involved in creating -- or selling these
20 touch screen machines. And I have a few recommendations
21 to make. And I want to comment a little bit about the
22 research within the time limits.

23 My first suggestion is that we encourage the
24 state legislators and regulators to establish true
25 security for voting machines and paper ballots before,

1 during, and after elections.

2 In Alameda County it was discovered that the --
3 after the recall election that Diebold touch screens were
4 delivered several days in advance to voting sites. Not a
5 good idea.

6 Each state -- first we should urge state
7 legislators and regulators to stop the purchase of voting
8 machines until the requirements of the 2002 federal law
9 entitled "Help America Vote Act" (HAVA) have been met.
10 And then an oversight committee and a technical committee,
11 which would establish criteria for certification, are
12 implemented at the federal level. These criteria --these
13 parts in the law have not been implemented. Money is
14 being forced on our states to buy these machines. "Wrap
15 these mops" is the slang here. But the certification --
16 the committees, the technical committee which would
17 establish the criteria for certification haven't even been
18 established yet. So this -- it sounds illegal to me that
19 we're even giving the money to purchase these machines.
20 They're being purchased. There's no paper trail.

21 We should perhaps brain state level with
22 investigations of the elections registrars. The Los
23 Angeles Times reported in I think it was late
24 November that California registrars were socializing with
25 the representatives of the touch screen voting companies,

1 especially those affiliated with the Republican Party, a
2 practice that is illegal. It's unethical in other states
3 and considered illegal, and it should be throughout all
4 the states.

5 Conny McCormack apparently is one of the persons
6 who has traveled with the friend from one of these
7 companies. And I forget which company that was. But
8 these practices need to be -- there seems to be -- greater
9 oversight needs to be a constant investigation of these
10 persons.

11 And then we should encourage the development of
12 legislation creating rules in an Ethics Committee that has
13 greater oversight of elections, especially employees'
14 activities before, during, and after working for the
15 counties and the state. Encourage state level
16 investigations into all the illegal and partisan
17 activities of the touch screen voting companies, and bring
18 injunctions to stop the purchase of touch screen machines
19 when such companies have shown themselves to have serious
20 conflicts of interest and/or illegal activities in their
21 past.

22 For instance, Sequoia was apparently charged by
23 the Justice Department with bribery in 1999.

24 Furthermore, in 2001 a county in Florida canceled
25 it's Sequoia contract after discovering Phil Foster of

1 Sequoia faced indictment. Foster is said to have helped
2 Michelle Towns, who refuses a paper trail, of Riverside
3 County, oversee her touch screen machines at elections.

4 VICE CHAIRPERSON CARREL: Ms. West, your time has
5 passed. If you could --

6 MS. WEST: All right. And then Diebold we know
7 has apparently -- just very quickly say this, because not
8 everybody may know. But the President of Diebold has come
9 out on behalf of Bush and says, "We're going to deliver
10 all of Ohio's electoral votes," not only in his letter to
11 the Republicans in northern Ohio, but also in speeches
12 I've heard.

13 And according to Ben Harris, they hired people --
14 three felons -- three felons -- Diebold hired three
15 felons. One of them was a computer expert. And they also
16 turned off -- they've turned off their security measures
17 in other elections outside of the state.

18 VICE CHAIRPERSON CARREL: If you could wrap it
19 up.

20 Thank you.

21 MS. WEST: So scanners until it's something a
22 little bit more safer. Thank you.

23 Absentee ballots -- no counting --

24 VICE CHAIRPERSON CARREL: Many of your comments
25 we've heard at previous hearings. So thank you.

1 MS. WEST: Thank you.

2 CHAIRPERSON KYLE: If you have anything in
3 writing, please feel free.

4 MR. RITCHIE: I'm Scott Ritchie. I'm from Yolo
5 County.

6 CHAIRPERSON KYLE: Do we have a card from you?

7 MR. RITCHIE: Right here.

8 Okay. Some new stuff for you actually.

9 About a hundred years ago we went in this country
10 from party printed ballot to the Australian ballot. And
11 now we've got computerized ballots. And the Australians
12 beat us again with the Australian voting machine.

13 You know, it's a direct recording electronic
14 machine. It's got -- its code is completely open to the
15 public. They built it and they did it quicker and
16 cheaper. They only had to bear the cost of software
17 development once. And now everyone can use the Australian
18 voting machine.

19 The trouble is it's not exactly compatible with
20 California election laws. Now we require paper-printed
21 receipts and everything and -- via all sorts of stuff.
22 And in Australia they didn't even need to require that
23 because people could trust the machine because they could
24 view the code from the start.

25 And so -- here we can't do this. And so I've

1 decided and we've filed our incorporation papers today to
2 open up the Open Vote Foundation, to port the Australian
3 code to the United States, to California to make it
4 compatible with California election law.

5 We will be completely open to the public.
6 Everything here will be there. And we'll create an open
7 standard, free to the public, free to anyone who wants to
8 look and check for these electronic voting machines. Then
9 any vendor can take our software and use it to make their
10 own voting machine and have their code open to the public
11 and viewable.

12 Broward County spent \$17.2 million on their touch
13 screen voting machines and they all suck.

14 (Laughter.)

15 MR. RITCHIE: You give me \$17.1 million, I'll
16 take the Australian -- I'll make a better voting machine
17 than for Broward County and, you know, I'll give it to
18 California, or Yolo or wherever.

19 We've done it before. The Australians did it
20 before. They can build these open machines cheaper,
21 better, and faster. And they took solicitations and
22 professors from Australian Universities who were reading
23 the code and sending them their own bug fixes, and
24 everyone in the code got really secure really quick, and
25 it just worked so much better.

1 And there's no reason we need to pay the cost for
2 all these software developers and checkers and technicians
3 over and over again when we can just sort of do it once
4 and centralize and have the results free to everyone in
5 the world really.

6 And make a machine that doesn't suck, yeah.

7 (Laughter.)

8 VICE CHAIRPERSON CARREL: Thank you. And good
9 luck.

10 MR. ZORACH: My name is Tim Zorach. And you have
11 a card for me. But it's No. 2, not No. 1.

12 VICE CHAIRPERSON CARREL: Okay.

13 MR. ZORACH: The foundations of the democratic
14 process in the United States are under assault in a number
15 of areas: Grossly excessive financial contributions
16 exerting undue influence in political campaigns,
17 previously free and independent mass media that now
18 emphasizes sound bytes, an electorate which nationally
19 includes 100 million non-voters. And now electronic
20 voting machines which lack a voter-verifiable paper trail.

21 In the latter instance what better way to
22 discourage voting than to provide a method of voting which
23 leaves voters without confidence that their votes will be
24 counted properly.

25 California has been under pressures to introduce

1 electronic voting machines as a result of federal
2 legislation and vendor lobbying. The pitfalls of
3 electronic voting have been well established, and the
4 measures that would mitigate the accompanying problems
5 have been equally well identified.

6 At this critical time with a presidential
7 election approaching, California must assure insofar as
8 possible that the voters of the state have confidence in
9 their voting machines by adhering to these minimal
10 standards.

11 All California election law shall be strictly
12 enforced. No waivers shall be allowed. All electronic
13 voting machines shall have a voter-verifiable audit trail
14 and independent verification for potential recounts and
15 shall be free from fraud.

16 Voting machine vendors shall have exemplary
17 ethical records, have not employed felons, have not
18 knowingly installed uncertified software, and have adhered
19 to nonpartisan policies and practices.

20 Voting machines shall have been tested publicly
21 by an independent body and their computer code shall have
22 been inspected and verified. No vendor shall be able to
23 complain proprietary interest for the computer code used
24 to tabulate citizens' votes.

25 The voting systems shall be easy enough to use by

1 every voter so that no significant disparities and
2 accessibility or error rates occur among different groups,
3 minority, disability, et cetera.

4 Finally, and very importantly, California, not
5 the vendors, shall be in control of the voting system.

6 Thank you for the opportunity to express my
7 views.

8 CHAIRPERSON KYLE: Thank you very much.

9 (Applause.)

10 MR. OLSEN: I'm Hebard Olsen. I'm trained as a
11 teacher in physics, chemistry, and biology. When I taught
12 my class -- I am now retired -- I used computers to make
13 assignments, take grades, seating charts.

14 I made mistakes. But it was all available for
15 the students to see. If I made a mistake, the students
16 would show me their paper. They would show me what it
17 said in the computer. And they'd say, you know, "We got
18 to do something," and I would.

19 But as a result of doing that much programming
20 for all of my students -- I mean I wrote the program and
21 it ran in the classroom -- I really don't trust anyone's
22 software unless either I wrote it or the person who wrote
23 it didn't know what it was going to be used for.

24 Now, I can actually trust Word or some program
25 like that because Mr. Gates didn't know what I was going

1 to do with it.

2 But, you see, the voting machines are different.

3 The voting machine company knows what the software is
4 going to -- the programmer knows, and can put things in.

5 And one of the persons brought up -- this is
6 really scary. But someone could change the code in the
7 middle of an election and change it back and no one would
8 know. This is scary. But it sounds very possible
9 considering what I've heard.

10 And including the fact that they're jerry-rigged
11 together and someone could, you know, pull something
12 apart, put something together and, you know, pull off
13 whatever.

14 And it's further complicated because they're
15 saying we're going to save all this money. But the people
16 you hire at the polling places are going to have to be a
17 lot more talented to deal with all this stuff than the
18 people they get now. And no one ever talks about the cost
19 of that. I mean wages are money, you know.

20 Okay. I wanted you to realize the consequence of
21 what you're really doing. You are going to make the
22 United States or at least the State of California into a
23 fascist state if in fact you allow the software companies
24 to actually make the vote rather than the people. And I
25 want you to connect with that. That's what -- that's the

1 definition of fascism.

2 And I want to also point out, we could have a
3 meal of filet mignon or lobster thermadore. But if it's
4 been tainted with people contamination, it is now garbage.
5 Okay.

6 If someone takes a voting machine and changes the
7 software, you have now made it garbage. I want to see a
8 paper trail --

9 VICE CHAIRPERSON CARREL: Your time's up, sir.

10 MR. OLSEN: -- open software, easy to read by 90
11 percent of the programmers, at least. And I think it's
12 important to build the confidence of the people of
13 California about their vote.

14 (Applause.)

15 CHAIRPERSON KYLE: Thank you.

16 VICE CHAIRPERSON CARREL: Seeing that the
17 comments overall, turn it back to the Chair.

18 CHAIRPERSON KYLE: Any further comments from the
19 Panel?

20 Mr. Carrel, I see you do.

21 VICE CHAIRPERSON CARREL: It's back to me.

22 I have a few questions -- a few comments on some
23 of the public comments.

24 There was a comment about utilizing more
25 technical consultants. That's the goal of Technical

1 Oversight Committee, which the Secretary has created and
2 which staff is now working on, to provide an ongoing
3 Technical Oversight Committee with regard to the software
4 and the hardware, and to assist us in doing that.

5 On the wireless question, I believe it was Ms.
6 Hench who responded. But I'll ask Mr. Freeman, are any of
7 the Diebold systems that we have viewed, do any of them
8 have any wireless capability?

9 MR. FREEMAN: On some of the systems there was
10 documentation saying that wireless capability was
11 available. During testing I have asked about that and
12 challenged him. It has always been my recommendation that
13 no external communication, wireless or even modem
14 connection be used because of the vulnerabilities involved
15 in that type of environment. And any of the systems we've
16 tested have been tested on that basis.

17 I've been told that Diebold was going to be
18 removing those references and support one time from the
19 documentation. But I have not seen that change made.

20 VICE CHAIRPERSON CARREL: And so that you're
21 talking about documentation. But in terms of the systems
22 that are used currently --

23 MR. FREEMAN: None of those systems I've seen has
24 had that capability installed.

25 VICE CHAIRPERSON CARREL: Okay. And none of it

1 that we've certified here?

2 MR. FREEMAN: None that we've certified.

3 VICE CHAIRPERSON CARREL: I'm sorry, Mr. March.

4 Public comment is over. We're asking questions, the

5 Panel. The audience had their point -- you had your

6 period. And so if you'd let us.

7 Thank you.

8 MR. FREEMAN: Can I make one additional comment

9 on that just to make clarification on a point?

10 We have tested that system and configuration.

11 But it's an ongoing issue that has to be worked all the

12 time. That what's actually used in the counties needs to

13 be assured that their complying with that policy. And

14 that's the vulnerability that we need to be aware and

15 watching. And that's part of the whole --

16 VICE CHAIRPERSON CARREL: The other issue was

17 someone bringing up the issue of changing code while the

18 machines are in use. That doesn't make any sense to me.

19 Is that even feasible?

20 MR. FREEMAN: That's an old problem. There's

21 been a period of time where that was absolutely prohibited

22 in most secure developments. We're starting to get back

23 into that environment and whether the environment's much

24 concern of the community that is in working with standards

25 and testing the certification. It is potentially

1 possible. Most of these systems that we're talking about
2 have gone through the IT process with the -- under the
3 federal standards. That includes code review. And
4 they're supposed to be looking for those features that
5 permit that to happen. And they're not supposed to accept
6 the system if it occurs.

7 When it gets into the state level, we don't test
8 for that. We don't have any license to go ahead and go on
9 to the software. So we're depending on the IT testing at
10 that point.

11 But it is possible. However, part of the
12 controls that we're looking at is to make sure that the
13 software that's running and installed in the systems
14 should be restricted and tested and verified beforehand.
15 But I made recommendations through the Election Division
16 here. They're doing work with it. It's part of the idea
17 behind that R & G contract -- or at least I believe it
18 is -- where we're doing certification validation to make
19 sure that the software that is installed is a software
20 that it's supposed to be, that it hasn't been changed or
21 modified.

22 The NIST is working with the -- at the federal
23 level to establish a program where they're going to be
24 working with the public database of information to be able
25 to identify and check that information on a -- tools so

1 that we can go ahead and be able to verify at the time of
2 elections that we're working with only that software that
3 has been reviewed, checked, viewed, and verified.

4 VICE CHAIRPERSON CARREL: Okay. Thank you.

5 I have a question for the R & G consultant, Ms.
6 Whitney.

7 With regard to the audits that have occurred,
8 you've just been reviewing the machinery with regard to
9 determining the number of the software on those systems,
10 correct?

11 MS. WHITNEY: That's correct.

12 VICE CHAIRPERSON CARREL: You haven't been
13 comparing that version of software versus a -- either an
14 Astro version or a version of the software that they would
15 not have otherwise?

16 MS. WHITNEY: We did not.

17 VICE CHAIRPERSON CARREL: You did not.

18 Is that though part of the goal in terms of the
19 future procedures with regard to the random audits in the
20 future until we hit a baseline?

21 MS. WHITNEY: Correct.

22 VICE CHAIRPERSON CARREL: It is. Okay.

23 I have a question regarding the decertification
24 process. And I don't know that there's anyone on here who
25 can answer the question. And I don't think we have our

1 legal people here who can give us clarification for what
2 the code says. And I don't know, Mr. Miller, if you have
3 some clarification in terms of the process --

4 PANEL MEMBER MILLER: Depends on your question.

5 VICE CHAIRPERSON CARREL: What does the code say
6 about the process?

7 PANEL MEMBER MILLER: In terms of
8 decertification?

9 VICE CHAIRPERSON CARREL: Yeah, how -- I mean I'm
10 not familiar with it. And I think it may help clarify
11 some of the points pointed out by the public.

12 PANEL MEMBER MILLER: The code does provide that
13 in certain circumstances the Secretary of State can
14 withdraw certification or decertify a system.

15 It does provide, however, there's a six-month
16 period of time from the withdrawal until the election with
17 respect to any withdrawal; i.e., it takes six months to
18 prevent a previously certified system from being used in
19 an election. There's also a six-month notice requirement
20 of intent to withdraw or consideration with respect to
21 withdrawal. That can be shortened. But the second second
22 six-month period, the time between withdrawal and the
23 election, cannot be shortened under the code. So there's
24 a six-month period of time belted in the code between
25 actual withdrawal and at the time it cannot be used in an

1 election.

2 VICE CHAIRPERSON CARREL: Okay. Thank you.

3 I have some -- I have a motion that I'd like to
4 make. And the motion -- I spoke last time at this hearing
5 and questioned the representatives from Diebold regarding
6 the installation of software which was never reviewed by
7 the state or the federal government -- or federal testing.
8 And I think Diebold acknowledged at that point that
9 software was installed inappropriately, either because it
10 was not -- they didn't notify us at the state level or
11 they didn't even seek review at the federal level.

12 That's the information -- since then they've
13 provided information for Mr. Freeman, and they're still
14 providing information to Mr. Freeman.

15 But as this -- you know, I've heard some of the
16 comment here today and understand that I'm not -- I don't
17 think we can act rashly. And my view is that until we
18 have all the information that we need, we can't proceed
19 with any final determination. And I would ask the VSP,
20 the other members to take a approach that we're not at the
21 point in the investigation of this situation where we have
22 all the information either we need to satisfy all our
23 questions or to move forward.

24 And so at this point I would say -- I've provided
25 a list to Diebold that I'd like to make public today, and

1 now basically making everyone aware, that I'm going to
2 make a motion today to ask that we formally request from
3 Diebold a list of documents which would assist us in our
4 investigation.

5 And I'll read the list to you.

6 "Any information requested by our technical
7 consultant, Steve Freeman, to determine the magnitude and
8 importance of changes indicated in the software release
9 notes to assist us with the evaluation of the successive
10 versions of GEMS software installed in California
11 counties.

12 "Documentation regarding the software
13 modifications made to GEMS and the DRE systems in each
14 client county.

15 "All federal qualification and state
16 certification documentation of each version of software,
17 hardware, and firmware that was installed in each client
18 county.

19 "Documentation of material control procedures,
20 including inventory and security controls, when units are
21 recalled from county service for maintenance at a Diebold
22 facility.

23 "All information available which clarifies
24 implementation of software which was not neither federally
25 qualified nor state certified when it was used for an

1 election. This may include internal and external paper or
2 electronic correspondence that was written since January
3 the 2001 by any Diebold employee or agent, regarding the
4 installation of uncertified software or regarding the
5 need, or lack thereof, to submit hardware, firmware, or
6 software for state certification or federal qualification.

7 "6. Written documentation of Diebold's internal
8 software development security procedures, from product
9 development through client maintenance.

10 "7. Copies of all contracts signed with
11 California jurisdictions from January 2001.

12 "8. Any further information which we might
13 request in writing at a future time to further facilitate
14 our investigation of the installation of uncertified
15 software."

16 And, in addition, we would require Diebold to
17 designate a contact person to deal with the VSP and the
18 Secretary of State's Office on all technical issues, and
19 who will direct all software modifications to our office
20 for distribution to client counties.

21 I believe at this point we have information, but
22 we don't have all the information we need, and we need to
23 move further to understand not only -- I think Diebold's
24 acknowledged what happened -- but to further understand
25 why it happened and how it happened, and how not only we

1 can prevent it from occurring, but whether something -- to
2 understand exactly what the situation was that led to this
3 incident.

4 And so I would make the motion that we formally
5 request this from Diebold.

6 CHAIRPERSON KYLE: I want to add to that, Mr.
7 Carrel. I want to add a couple of other questions as an
8 addendum to your list.

9 I would also like to request documentation
10 regarding any modifications to the Windows CE program for
11 use on the TS or TSx platforms and documentation regarding
12 any modifications to the Smart Card hardware or software
13 for use on the TS/TSx platforms as well.

14 A number of concerns have been raised at previous
15 hearings regarding these issues. And I want to make sure
16 they're thoroughly looked into. I think this
17 documentation coupled with what you're asking and coupled
18 with the technical requests that you've made repeatedly
19 and are waiting for now, Mr. Freeman, will help shed light
20 on a lot of this.

21 VICE CHAIRPERSON CARREL: I don't know whether we
22 want to set a deadline for receipt of this material. And
23 given the quantity and given the new information, I would
24 suggest 30 days, if that's not -- I don't know what the
25 other members of the panel think, whether that's too short

1 or too long.

2 PANEL MEMBER SORIANO: No, in fact, that was what
3 I was going to raise, is we should probably put a deadline
4 on the submission of all of the documents. And I think 30
5 days would be appropriate.

6 VICE CHAIRPERSON CARREL: Okay.

7 PERSON FROM AUDIENCE: Could we hear what he just
8 said?

9 CHAIRPERSON KYLE: He concurred with 30 days. He
10 was concerned about a timeline and he was thinking of it
11 and thought 30 days.

12 VICE CHAIRPERSON CARREL: So does that mean--

13 CHAIRPERSON KYLE: So do I hear that as a second?

14 (Thereupon a discussion occurred off the
15 record.)

16 VICE CHAIRPERSON CARREL: I can make copies of
17 this list available to the other members.

18 I would be happy to make -- I'd be happy to
19 add -- so that the public can get a copy of this, add your
20 two requests so that we can make this available and the
21 public knows what we're requesting.

22 (Thereupon a discussion occurred off the
23 record.)

24 VICE CHAIRPERSON CARREL: Well, I would first ask
25 that we don't get questions from the audience. But, valid

1 question.

2 Clearly, if they don't comply -- part of the
3 conditions of the certification were cooperation. And I
4 believe Diebold's willing -- or has expressed their view
5 that they're trying to cooperate as much as possible with
6 our requests. And I expect that they're going to try to
7 cooperate as much with this request. If they don't
8 cooperate with this, then, you know, we'll come to it at
9 that point.

10 But, clearly, one of the conditions may have been
11 violated.

12 CHAIRPERSON KYLE: Part of the condition of
13 certification was cooperation. So that's a -- it is a
14 condition of certification.

15 And, quite honestly, I'm frustrated that we're at
16 the point that we are where we're still plowing through
17 data, we're still plowing through analysis, some of that
18 because of the tardiness of the data, and also because, as
19 I'm told, in the analysis more holes become apparent and
20 we need more data to explain those holes.

21 Also just in terms of analyzing it from a
22 technical perspective, we realize we need to look at it in
23 a slightly larger perspective; hence, some of these
24 questions that have been raised, which have been generated
25 in part from previous testimony here and from staff as

1 well.

2 So the condition would be carried forward then,
3 predicated on this as an additional condition, 30 days.

4 And there was a second --

5 PANEL MEMBER SORIANO: There was a second.

6 CHAIRPERSON KYLE: Any discussion on that from
7 the panel?

8 All in favor?

9 (Ayes.)

10 CHAIRPERSON KYLE: Any opposed?

11 Any abstentions?

12 The ayes have it.

13 VICE CHAIRPERSON CARREL: Can I just make a
14 comment?

15 Yeah, as a condition -- as one of the conditions
16 of certification was cooperation. So in some ways we're
17 clarifying exactly what we mean by cooperation by
18 providing them this list and stating that other
19 information may be requested.

20 And to echo what the Chairman said, that I'm
21 equally frustrated. I mean I hear these public comments
22 and I recognize that you're expecting us to take action.
23 And we want to take action, but we don't want to take
24 action hastily. And we don't -- we want to do something
25 that responds to what occurred, without acting rashly,

1 before we have all the information.

2 And as I said to someone yesterday, it puts us
3 between a proverbial rock and a polling place. We are
4 placed where we have the election coming up, but we don't
5 want to take action on something -- or at least I don't
6 want us to take action on something until we fully
7 understand what the ramifications of that action are.

8 So thank you, other members, for approving my
9 motion.

10 PANEL MEMBER MILLER: Mr. Chairman, if I could
11 ask a question of staff.

12 I would like to know what the timeframe is to
13 implementing the random audit program. Will this be in
14 time for the March 2nd election, the parallel monitoring?

15 MS. WHITNEY: The parallel monitoring will be in
16 place for the March election.

17 PANEL MEMBER MILLER: Very good.

18 Excuse me. Some people may not understand what
19 you mean by parallel monitoring.

20 Could you explain that process briefly.

21 MS. WHITNEY: Essentially what we have discussed
22 at the elections level, division level has been that we
23 put in place a system whereby we can go into the counties,
24 working with the registrars of course, and taking the
25 equipment that was planned to be used and take it into a

1 secure situation and run test documents through it to see
2 what the results would be.

3 PANEL MEMBER MILLER: And this would be randomly
4 done so that no one would know which machine is being
5 selected and audited in that regard?

6 MS. WHITNEY: That's correct.

7 PANEL MEMBER MILLER: And that would be on
8 election day itself?

9 MS. WHITNEY: Correct.

10 PANEL MEMBER MILLER: Thank you.

11 PANEL MEMBER MOTT-SMITH: Mr. Chairman, I wanted
12 to make one comment as well.

13 In terms of --

14 CHAIRPERSON KYLE: Speak right into the --

15 PANEL MEMBER MOTT-SMITH: -- my support for that
16 motion is partly predicated on I think that there's a very
17 valid point, that so far we have not engaged any other
18 voting system in California other than Diebold. And I
19 think we need responsibly, some people have said so, to
20 make sure that we have a picture that includes all of the
21 voting systems, not just this one.

22 And I also think it might be worth our while,
23 either at the staff level or to ask the registrars to
24 develop and present something that does explain a little
25 bit about what the procedural securities are that

1 complement the technical securities on a voting system.
2 Because I think there is a big gap between practice and
3 common understanding.

4 So either we'll work on that at staff level or
5 we'll see if the counties can produce something along that
6 line.

7 CHAIRPERSON KYLE: Just for a point of
8 clarification, so for folks who may not have been here
9 last time, we are engaging -- and it was mentioned in the
10 report, in case you missed it -- in an audit of all of the
11 remaining 41 counties to establish a baseline. So we're
12 looking at the larger universe in the State of California,
13 not just at those counties that are Diebold, so we do have
14 a better handle on what's going on.

15 We are planning on releasing the reports and
16 making them public when they're complete. They're in a
17 work in progress now, so we're not going to do that. But
18 once they're complete -- and I know there were a number of
19 concerns raised, legitimately, about the openness of the
20 process, the openness of -- the transparency of the
21 process. And that's certainly a high priority with us,
22 and those reports will be made public and available to
23 those interested parties.

24 And also in terms of the point of resources
25 allocated to this type of an investigation and on a

1 go-forward basis just the technical oversight and review
2 of it, the Secretary and this agency are very committed to
3 that. The fact that we've engaged R & G as additional
4 technical experts to help conduct audit is a demonstration
5 of that commitment. That's taking a lot of resources in
6 employing them. We're continuing an ongoing effort of
7 employing them in a larger scope than has been done in the
8 past. And we're continuing to look for more consultants
9 to assist us on this and increase our staff within the
10 Agency to address the evolving technology. So the
11 commitment is there for more resources into this area and
12 for transparency in this area.

13 Is there further points from the panel?

14 Motions?

15 Then this section of the agenda is concluded.

16 I'm going to call for a ten-minute break. It's
17 now about -- it's 12:05. We've been meeting for almost
18 two hours. We have three more agenda items. And before
19 we continue I'd say let's reconvene at 12:15.

20 (Thereupon a recess was taken.)

21 CHAIRPERSON KYLE: All right. So why don't we
22 start back again.

23 And we are on Agenda Item No. 2.

24 So if the staff could please just give us your
25 report, I'd appreciate it. California Certification

1 Procedures.

2 MR. WAGAMAN: As I'm sure the Panel is aware, on
3 November 21st of last year, the Secretary directed that as
4 of July 1st, 2005, all new touch screen, or DRE, systems
5 must include a voter-verified paper audit trail, or VVPAT.

6 He further directed that as of July 1st of 2006,
7 all touch screen, or DRE, systems must be modified or
8 replaced to include a VVPAT. That includes currently used
9 systems.

10 The Secretary further directed this Panel to
11 establish standards for voting machine manufacturers to
12 follow in developing VVPAT systems.

13 In response to that directive, staff began
14 developing draft standards. Those draft standards were
15 then submitted to a working group of county clerks and
16 recorders. And that group met twice. In addition, those
17 draft standards were submitted to vendors for their
18 comments. We did receive comments back from four vendors.
19 They were also submitted to others, including
20 representatives from the disability community.

21 We have not received comments back from all the
22 groups that we submitted the draft to. And we have not
23 completed the internal process of review of those
24 standards.

25 Let me emphasize that any drafts that are in the

1 public domain right now are drafts and are not prepared to
2 be presented to this Panel.

3 Therefore, since the internal process is not
4 complete, staff recommends that you wait until the
5 completion of the ongoing process; at that time you take
6 the standard -- at that point preliminary standards under
7 submission for your review, and also allow for a formal
8 period of public comments.

9 I will add that even though there was not a
10 formal period of public comment on this item, that we
11 did -- staff did receive and has presented to you public
12 comments that we did receive for this meeting.

13 CHAIRPERSON KYLE: Michael, what do you
14 anticipate the timeline would be on getting back -- I mean
15 do you have -- getting back the comments that are
16 outstanding or that you're anticipating getting back and
17 being able to put that in a format we could then digest
18 and put out for public comment?

19 MR. WAGAMAN: I would anticipate that that
20 process could be completed in time for your next meeting,
21 whenever you schedule that.

22 CHAIRPERSON KYLE: The next meeting we're -- so
23 30 days, say, something like that?

24 MR. WAGAMAN: Yes, if you set -- 30 days is the
25 soonest you could schedule a meeting. And it could be

1 prepared by that time.

2 CHAIRPERSON KYLE: Okay. Any comments from the
3 panel?

4 Mr. Carrel.

5 VICE CHAIRPERSON CARREL: Well, I worked with
6 staff on this. And I want to commend Michael for doing a
7 great job with the initial draft.

8 And we have gotten a lot of feedback from the
9 working group made up of approximately eight
10 representatives of county registrars. I think their
11 feedback has been valuable. The comments that we received
12 from vendors were then reviewed by that group and filtered
13 through them.

14 So I think the process has worked out well. But,
15 again, I concur with staff that this process needs to
16 continue.

17 CHAIRPERSON KYLE: Okay. So I know we have a
18 number of comments on this. If this is an item that would
19 be continued until we get a formal proposal in a couple of
20 weeks, then it wouldn't really normally be under
21 comment -- or open for public comment. But I know that a
22 number of folks have traveled here today to comment on
23 that. So rather than not do that and wait 30 days, why
24 don't we take advantage of the fact that we have people
25 here, you make your comment, we'll put it into the record

1 and add it to the comments that probably will come from
2 the public comment review once we have a more formal
3 document.

4 So why don't we go ahead and -- unless I'm wrong.
5 I'm assuming there are people who want to speak on this.
6 We have about 18 here.

7 Okay. So why don't we go ahead and get that
8 started.

9 And we'll -- Mr. Carrel, do you have those in
10 hand?

11 VICE CHAIRPERSON CARREL: Sure. I love my job.

12 The first three: Scott Konopasek, Dan Kysor, Lou
13 Katz.

14 And I should say that if anyone here does not
15 wish to speak, even though they've put in a card, just let
16 me know and I'll move on to the next people to speak.

17 MR. WAGAMAN: All right. And are we using two
18 minutes or something like that?

19 VICE CHAIRPERSON CARREL: Yeah, we'll continue
20 with two minutes and discretion --

21 CHAIRPERSON KYLE: And we'll continue to allow
22 people to go over that the way we did before.

23 (Laughter.)

24 MR. KONOPASEK: Thank you. My name is Scott
25 Konopasek. I'm the Registrar of Voters in San Bernardino

1 County. And I'd like to thank the Panel for the
2 opportunity to offer some testimony here today.

3 Can you hear me now?

4 First of all, you know, I want to express some
5 surprise at the comments that were -- some of the
6 comments, many of the comments that were made this
7 morning.

8 If someone had just stepped into this room and
9 didn't know where they were, they wouldn't really believe
10 that this was a land that had over 300 years of democratic
11 history. They wouldn't believe that this was not a
12 democratic country with a very strong constitution with
13 elected leaders that are actually serving in positions
14 legitimately right now.

15 One might think that this was a third-world
16 country struggling with the pains of implementing
17 democratic reforms for the very first time.

18 I disagree vehemently with the characterization
19 of our electoral process as being broken. I think that is
20 categorically wrong. And I think that we can improve our
21 processes, we can improve our technology. But to
22 characterize the need to reform and improve as a breakdown
23 of our system I think is unfair, and I think it's wrong,
24 and I think it undermines the very vote of confidence that
25 many of the people who made the comments say is so

1 important to them.

2 So having made my emotional comments, I've heard
3 many experts being cited today. I've heard many people
4 offer their credentials as being expert in certain areas.
5 I'm not sure what the credentials are to be an elections
6 expert, but I aspire to be one in one day.

7 In terms of the proposal that's on the table, to
8 develop a paper audit trail for DRE systems, I find myself
9 and San Bernardino County finds itself in a rather unique
10 situation inasmuch as from a policy point of view our
11 board of supervisors a number of years ago said that this
12 would be a desirable function and feature of a DRE system.
13 We're unique, secondly, because we have contractual
14 provisions with our vendor to provide such a system, at no
15 additional cost to the county, in anticipation of a
16 requirement.

17 I fully anticipate that San Bernardino County is
18 going to implement some type of paper audit trail
19 functionality very soon. And if we're not the first, we
20 might be the very first.

21 My comments, however, even given our unique
22 situation, are that I have some serious concerns, grave
23 concerns with the proposals that are on the table right
24 now for the VVPAT. And I'd like to just summarize those
25 very briefly.

1 First of all, I believe that the underlying
2 assumptions behind many of the specific items in here are
3 not based upon fact. I don't think that they're based
4 upon a scientific, rational assessment of the technology
5 or the risk of the vulnerabilities of the voting systems.
6 In fact I think many of the arguments underpinning these
7 recommendations are purely emotional. And some of them I
8 think are patently intellectually dishonest.

9 I think that a fair evaluation of the
10 vulnerabilities and risks associated with DREs is an
11 appropriate way to address the functionality and
12 requirements for a voter-verified paper audit trail. So
13 that was my first point.

14 My second point is: What is being proposed in
15 here is not a paper audit trail. But being proposed in
16 here is a redundant electronic ballot printed on paper,
17 which is a new voting system. I was really surprised when
18 I read that in addition to going from a paper audit trail,
19 we're going to a new balloting system, that in -- we were
20 also going to be required to have a new ballot tabulation
21 hardware/software application in order to count the
22 ballots generated by this new, I call it, redundant
23 electronic ballot on paper, REBOP.

24 To have an audit trail is not necessarily to have
25 a new balloting system. To have a balloting system is not

1 necessarily to have a new piece of technology that does
2 not exist to be developed and implemented concurrently.

3 So I'm in favor of a paper audit trail. However,
4 I'm not in favor of the converting this audit trail to a
5 ballot, giving it ballot status, and requiring all special
6 requirements that are associated with that. And I think a
7 truly scientific objective analysis of the risk using
8 industry standards for that process will determine that is
9 not necessarily needed.

10 VICE CHAIRPERSON CARREL: Scott, you're way over
11 time.

12 MR. KONOPASEK: Okay. The last -- my last
13 comment here is that I'm glad to see that the process is
14 taking a pause and slowing down. I think that to hasten
15 these requirements or this proposal through the process is
16 in contravention to good governance and to the development
17 of good policy. And I'm grateful to see that the panel is
18 allowing a little bit more time for consideration of these
19 things.

20 And I would urge the panel to insist upon a
21 thoughtful, non-emotional, objective, not-deterministic
22 approach to providing an audit trail that will inspire
23 voters to have confidence that their votes are being
24 recorded correctly.

25 Thank you.

1 MR. KYSOR: I didn't plan to sit there either.

2 Is this the one?

3 I'm glad you have a stand. I need both hands.

4 Good morning, Board and guests. And Happy New
5 Year, I think. My name is Dan Kysor. I served on a
6 consumer panel under Secretary Jones, also coincidentally
7 called VSP. I currently serve on the Yolo County Voting
8 Accessibility Commission under Freddie Oakley. And I'm
9 Governmental Affairs Director for the California Council
10 of the Blind. And I have some comments.

11 And I addressed my comments to the Voting
12 Modernization Board. I meant to address them to this
13 Board.

14 And I do have something for the records. If
15 there's a staff person who could get this for me.

16 CHAIRPERSON KYLE: They're approaching you right
17 now.

18 MR. KYSOR: Okay, wonderful.

19 The California Council of the Blind and the
20 American Council of the Blind is opposed to the use of
21 voter-verifiable ballot paper receipts only relative to
22 access issues. However, the recent ruling by Secretary of
23 State Shelley requires everyone to live with this added
24 requirement; a requirement, which I might add, is not --
25 is virtually going to be impossible to fulfill by many

1 counties by the Year 2006. And it poses a significant
2 problem for purposes of direct -- I'm sorry -- purveyors
3 of direct access recording equipment who have no such
4 ballot printers currently available or ballot receipt
5 systems certified.

6 We propose several recommendations -- a couple
7 recommendations to this Board.

8 The first recommendation is that counties could
9 receive a waiver if they could demonstrate that these DREs
10 cannot be used with their new verifiable paper ballot
11 receipt printers, or due to budgetary constraints such as
12 they bought all this equipment and now they can't use the
13 paper verifiable ballot receipts and they need time to
14 gear up. That the existing systems could still be used
15 after receiving the waiver.

16 An additional recommendation is the Board should
17 recommend an independent voter-verifiable ballot receipt
18 system that can be used by all DRE systems. And, after
19 all, that is what we're talking about here, is an
20 independent verifiable ballot.

21 We believe that blind and disabled voters have
22 the right to vote in accordance with the Help America Vote
23 Act and that their right to a secret independent
24 verifiable ballot will be served if this Board takes the
25 steps that I have just outlined.

1 Also -- let's see. There was one more point I
2 was going to make.

3 I think that if the Board takes these steps, it
4 will be in a much better position to implement these
5 various voting requirements -- voting legislation that are
6 both coming down federally and by county -- federally and
7 state, and that the counties would be in a better position
8 to serve their voters.

9 Thank you very much.

10 CHAIRPERSON KYLE: Thank you.

11 VICE CHAIRPERSON CARREL: Thank you.

12 Lou Katz, Joyce Eden, and Steve Trout.

13 MR. KATZ: I'm Lou Katz from Oakland.

14 I was a little disappointed to hear that you had
15 sent out information about the certification procedures to
16 three constituencies, the registrars, the industry
17 vendors, and the disabled, but you did not mention any of
18 the people who might be able to comment from a computer
19 science or computer technology point of view. I find this
20 omission very troubling.

21 I also have found out that when you say that
22 something has been certified at the federal level, you
23 discover that you cannot find out what the federal
24 certification procedures are. Therefore, we are told,
25 once again, that we have faith-based voting.

1 And, finally, I find the whole rush to electronic
2 systems very puzzling and very disturbing, because even in
3 the best of systems errors show up at the last minute or
4 changes are needed at the last minute. A change in the
5 constituency who is on the ballot may occur at the last
6 minute. And the procedures for certifying the machine
7 when you're going to do a change are such that it takes
8 far longer than is reasonable.

9 This means that we are -- if we believe that the
10 current systems are flawed, we are all terribly at risk
11 because what we keep hearing is, "Oh, we can't fix it fast
12 enough. You'll have to make due," or "It's going to cost
13 too much money. We'll have to make due," or "I can't get
14 my job done on election night. I might have to work two
15 more days, so I really don't like it," or "I already
16 bought these things and, therefore, you have to use them."

17 Thank you.

18 VICE CHAIRPERSON CARREL: Thank you.

19 Joyce Eden.

20 MS. EDEN: I pass.

21 VICE CHAIRPERSON CARREL: Passes.

22 Steve Trout, Robert Kibrick, and Dennis Paull.

23 CHAIRPERSON KYLE: Welcome back, Steve.

24 MR. TROUT: Thank you.

25 Good afternoon, Mr. Chairman. Thanks for the

1 opportunity.

2 Two points I want to make real quick.

3 And, again, Steve Trout, Assistant Registrar of
4 Voters for San Bernardino County.

5 In San Bernardino County we're ready, willing,
6 and able to implement a paper audit trail. And we want to
7 urge you to urge the Secretary that once we get some
8 vendors come forward with some prototypes and some
9 machines that have been tested to their requirements, that
10 you grant some conditional certifications, you know, for
11 smaller elections and things so that we can test those
12 out. And, you know, we feel that's important. We want to
13 get out and make this happen as quickly as we can.

14 At the same time, it's a really complicated issue
15 and there are a lot of issues that need to be addressed,
16 and I think, you know, very many that a lot of us haven't
17 even thought of yet until we go forward and try to make
18 this work.

19 And so that's why I wanted to go to -- make
20 comments also on what staff's proposed as the, you know,
21 staff's voluntary guidelines that they're coming up with
22 here in response to the paper audit trail.

23 And I want to encourage, kind of like many of the
24 statements have been there, that be as open a process as
25 we can. And, you know, I even think that it's probably

1 something that's more appropriate to take place in the
2 legislative process, so that we can have the laws and the
3 changes in the Elections Code that are necessary in order
4 to make this work. And, you know, that way we don't have
5 to worry about changes, you know, from the federal level,
6 we don't have to worry about voluntary guidelines that the
7 Secretary may put out or if you choose to go the
8 regulatory route. You know, that way we have something in
9 the Code and it's more -- you know, it's more open, more
10 people know about it, more people have input into the
11 process, and we can hear from all of those that are
12 concerned.

13 And, you know, we don't -- I applaud staff for
14 trying to work fast on this issue. But, you know, 30 days
15 isn't enough time to come up with a policy on this complex
16 an issue. And so I encourage you to open the process to
17 more people, to try not to have a determined result that
18 you're trying to achieve, but figure out where -- you
19 know, where we can improve things so that voters have more
20 confidence and that we can run better elections.

21 Thank you.

22 CHAIRPERSON KYLE: Thank you.

23 VICE CHAIRPERSON CARREL: Thank you.

24 Robert Kibrick, Dennis Paull, Judy Bertelsen.

25 MR. KIBRICK: Robert Kibrick from Santa Cruz

1 County.

2 I'd like to thank Secretary Shelley once again
3 for establishing the voter-verifiable paper audit trail
4 requirement on November 21st.

5 I'd also like to thank to Board for stating here
6 publicly today that they are going to make reports related
7 to the certification process open for public inspection.

8 With regard to the comments from the gentleman
9 from -- the first gentleman from San Bernardino, talking
10 about this underlying assumption as being emotional and
11 not scientific, I would point out that there have been
12 three studies, two of which were commissioned by
13 government agencies, which were done in a scientific
14 manner, the Maryland SAIC report and the Ohio Compuware
15 and Inco Sentry reports, that are not emotional and that
16 in a very scientific and precise way describe some of the
17 deficiencies in these machines.

18 I think it's important that in whatever
19 requirements you establish for the voter-verified paper
20 audit trails, the needs of blind, disabled, visually
21 impaired voters need to be addressed. And this is often
22 posed by vendors and even by some of the elections
23 officials as some of -- a notion that establishing this
24 requirement is somehow intended to disenfranchise such
25 people. I think that's an incorrect characterization.

1 And many of us in the computer science community are
2 anxious to see that these needs are properly addressed.

3 And we should define these requirements, not in
4 terms of what the vendors say they can provide, but what
5 the voters and, in particular, the blind, the disabled,
6 the visually impaired, the language -- people with
7 dyslexia or minority languages and so on -- those needs
8 have to be addressed. We have to say, "This is what you
9 must provide." Technology exists to make these things
10 verifiable. There are text-to-speech technologies, there
11 are bar code-to speech technologies that can be employed
12 to render a paper ballot into an audible form that can be
13 understood by someone who is blind or who is not literate
14 in English.

15 On these -- there's technology here to solve
16 this. We need to compel the vendors to embrace that
17 technology and to meet the needs of this community. And I
18 would encourage you in establishing these requirements to
19 look at the various research institutions in this state,
20 the universities and various other research organizations
21 that would love the opportunity to work with you to help
22 develop this technology, so that every voter in
23 California, whether they're blind, whether they're
24 sighted -- every voter should have the ability to have a
25 voter-verified paper ballot. We want to get there. We

1 want to ensure everyone's vote is protected. We don't
2 want to disenfranchise anyone. And please give us the
3 opportunity to make sure that the technology that exists
4 is incorporated into these vendors' products.

5 Thank you.

6 CHAIRPERSON KYLE: Thank you.

7 (Applause.)

8 VICE CHAIRPERSON CARREL: Dennis Paull.

9 MR. PAULL: Yes. Thank you, members of the
10 Panel.

11 I would like to second everything that Bob said.
12 I think that's -- the previous speaker -- that's really
13 critical that people do not take the technology that
14 exists from these private vendors and say that that's the
15 only thing that we can have.

16 We can have more if we choose.

17 For some reason voting machines have in the past
18 been state certified that do not meet the conditions set
19 out in the Elections Code. The Code requires that voting
20 machines be secure, allow secret ballots, and produce a
21 printout of both totals for posting at the precinct. Not
22 all certified voting equipment meets these simple
23 requirements.

24 I strongly urge this panel to ask staff to meet
25 the scripted standards set out in the code. Do not

1 certify equipment that, despite staff assurances, fails
2 these tests. And I understand the difficulty that that
3 would put on the panel. But clearly equipment that does
4 not deserve to be certified has been certified in the
5 past.

6 Thank you.

7 CHAIRPERSON KYLE: Thank you.

8 VICE CHAIRPERSON CARREL: Thank you.

9 Judy Bertelsen, Maureen Smith, Anita Cameron.

10 MS. BERTELSEN: I'm not sure if what I'm about to
11 say fits certification. But I'll just say briefly, in the
12 previous topic discussion, the question of decertification
13 was brought up. And the difficulty, the time constraint
14 for decertification seems to put us in a situation where
15 because of the time involved in requesting information
16 from Diebold, for example, and having to sit around and
17 wait to see when that might appear, that we end up with a
18 fait accompli, we end up with a situation that can't be
19 stopped. It looks like, from what people are saying, that
20 it's impossible to decertify even if this company isn't
21 meeting its requirements.

22 So I think this is a serious problem. And I
23 understand fully and sympathize with the problems all of
24 you and us have in trying to deal with these matters
25 expeditiously. But I do think we need to be very

1 careful -- more careful about not kind of preliminarily
2 certifying companies that haven't really met the
3 standards; or when they violate the standards, allowing
4 forever this to go on and on and on. And then we end up
5 in 2004 having elections conducted in a way that I believe
6 many of us are far from confident.

7 VICE CHAIRPERSON CARREL: You were correct. That
8 was not on point. So I would ask those who do comment,
9 that you keep it to this item, which is the voter-verified
10 paper audit trail under Certification Procedures.

11 Maureen Smith, Anita Cameron, and Lindsay Vurek
12 are the next three witnesses.

13 MS. SMITH: Maureen Smith, Santa Cruz County,
14 again. And I want to reiterate that the Santa Cruz County
15 Board of Supervisors specified that they would support HR
16 2239 and that they also called on Secretary of State
17 Shelley to decertify any equipment that did not have a
18 voter-verified paper trail. And they did this unanimously
19 over the objections of the county clerk and registrar of
20 voters. I think they have an idea of who is supposed to
21 serve whom in Santa Cruz County.

22 I'd like to say that whatever we do on this, we
23 should be moving towards transparency. I never questioned
24 it when I worked over three administrations with the
25 Elections Division: Jerry Brown, March Fong Yu, and Tony

1 Miller. I always had a very cordial relationship, and I
2 never questioned the integrity of anyone in that office.

3 However, things have changed and my eyes were
4 very much opened in May when I came to a meeting here.

5 And I have some very general comments. I guess
6 you don't want mine on -- my most recent experience
7 dealing with elections is as an election inspector in
8 Santa Cruz County. And I must say that I trusted
9 everything up to the point of turning over the ballots.
10 We did a very good job. And we did show the first person
11 the empty ballot box and we locked it after that and so
12 forth.

13 But it would be nice to have a clear ballot box
14 for utter transparency so every voter coming to the polls
15 could see that the ballot box was only holding the ballots
16 of those people who had already voted.

17 I would like to see everyone, the panel and staff
18 alike, implement and enforce all existing law. And that
19 includes the law that has been promoted by Secretary of
20 State Shelley, Sections 19001 to 19234 of the Elections
21 Code. I'm not sure if everybody is up to speed on this,
22 but it does affect the subject that you are discussing
23 right now on the agenda.

24 Secondly, I would like to see -- and you're
25 probably going to call me out of order -- but I would like

1 to see a requirement that staff sign contracts that they
2 will not leave the Elections Division to work for vendors,
3 be considered for certification in this state unless two
4 years have passed from the time they leave and the time
5 they begin employment with the vendor.

6 You're aware of Deborah Syler. You're aware of
7 Lou Dedier. And I don't know how many others may have done
8 the same thing. But it looks very -- it just looks like
9 the public is not being served and it gives rise to
10 questions of integrity and ethics in the Elections
11 Division.

12 Thank you.

13 VICE CHAIRPERSON CARREL: Again, that's correct.
14 That should have been under "other business." And I would
15 again repeat, there is room for other business, for other
16 comment. So if you have something unrelated to the VVPAT
17 procedures, which we're discussing now, please hold it.
18 And you can submit a card for other business.

19 Anita Cameron, Lindsay Vurek, and Conny
20 McCormack.

21 Anita, I think you're up there.

22 MS. CAMERON: Good morning. My name is Anita
23 Cameron, and I'm with the American Association of People
24 with Disabilities. And I want to thank you for giving me
25 this opportunity to speak today.

1 I am against the voter-verified paper audit
2 ballot simply because it disenfranchises people with
3 disabilities, people like myself who are visually
4 impaired; people who are blind; people who have language
5 disabilities, such as dyslexia or difficulty in reading
6 their language; or people who have no use of their hands,
7 who have to actually pick up the ballot and carry it and
8 put it in a box.

9 What that does is that takes away our
10 opportunities to vote independently and in secret.

11 I'm also speaking to you as a former election
12 judge. And I've witnessed personally the things that
13 happened to people with disabilities when we are not
14 allowed to -- or not able to vote independently and
15 secretly.

16 I'm not a computer person. All of the
17 technology, you know, stuff kind of goes over my head.
18 But what -- I guess the point that I'm trying to make is
19 everyone's talking about security in voting. And
20 obviously myself as an American citizen considers that
21 very important. Voting is very, very important to me. In
22 fact I don't consider it my right. It's my duty as an
23 American citizen to vote. After all, people died so that
24 I could have the right to vote. Obviously, as you notice,
25 I'm African American and so I'm speaking from that

1 perspective as well.

2 Now, because I'm disabled, what's being said is
3 is that I cannot vote independently. Those DREs, the
4 electronic machines, are often the only way that a person
5 with a disability can vote. So I would urge that if the
6 technology exists to make a voter-verified paper ballot or
7 audit trail, if the technology exists to make that
8 accessible so that people with disabilities can utilize
9 that system, I would urge that it be put into place
10 immediately. Personally I don't know -- I've heard
11 arguments on both sides. I don't know if that technology
12 exists. As far as I'm concerned, it doesn't exist right
13 now. And for -- I don't know, for a technology that
14 really doesn't exist, to be implemented by July 1st, 2005,
15 is pretty early.

16 So what it appears is is that people with
17 disabilities won't -- will be disenfranchised at least
18 until 2006, or even later, until either the technology
19 exists or the vendors have the will to use the technology.

20 All I'm saying is is that I urge that if
21 you're -- obviously this is going to be put in place.
22 Please remember those of us with disabilities and people
23 who can't necessarily read English, please remember us,
24 and please put a system in place that will assure our
25 ability to vote and that's accessible to all of us.

1 Thank you.

2 VICE CHAIRPERSON CARREL: Thank you.

3 CHAIRPERSON KYLE: Thank you.

4 VICE CHAIRPERSON CARREL: Lindsay Vurek, Conny
5 McCormack, and Mark Phillips.

6 MR. VUREK: When I looked at this paper -- and I
7 hope I'm going off the right paper -- dated November
8 21st -- that's the position paper and directed from the
9 Secretary of State -- I was somewhat disturbed initially
10 on page 4 with these timelines, that when I thought about
11 the details for the county in terms of the voter-verified
12 paper trail, these timelines are really too long. Because
13 if you followed this since all of this has come to light,
14 many of the vendors have said they can do this much sooner
15 in terms of the printer. And there's already
16 demonstration systems working well as far as producing a
17 voter-verified paper trail.

18 But then when you start going through the details
19 for Alameda County, where I live, of district elections,
20 you see the sampling problem, that if you -- you know, and
21 this involves the one percent count law and the recount
22 provisions -- that to make this work and make it doable,
23 you can do it at the Assembly District level much sooner
24 than these dates. Once the technology for the
25 voter-verified trail is out there -- which it should be

1 very soon, and it is for some companies right now -- then
2 doing the 800 sample size for an Assembly District for
3 Alameda County is not such a great problem of those
4 voter-verified papers.

5 If you start to get to district elections in a
6 city like Berkeley or Oakland, you can see that the
7 problem mushrooms; and it's why many of the registrars, if
8 they think through the details, they kind of hate this
9 mandate because it adds a lot of paper and a lot of random
10 verification.

11 So I would hope that the mandate would change to
12 include Assembly level and up districts, you know, State
13 Senate, state level races sooner, because that's very
14 doable. And it shouldn't be these far-out dates. But to
15 make the integrity for lower level district races and so
16 on, you know, it does need a little longer timeline for
17 the voter -- the audit process. That is, having a random
18 selection, you know, with at least plus or minus 3 percent
19 error, like 800, to that kind of range of sample size.

20 So that's my input, that you should modify these
21 timelines, and you should stage it. And I sent in
22 comments to that effect, you know, saying stage 1, stage
23 2. Stage 1 is to do it at races at that level, where it
24 wouldn't be such an imposition on Alameda County because
25 you're not going down to district level verification.

1 Thank you.

2 VICE CHAIRPERSON CARREL: Thank you.

3 Conny McCormack, Mark Phillips, and Marcia Rider.

4 MS. McCORMACK: Good afternoon now. I'm Conny

5 McCormack, The Los Angeles County

6 Registrar/Recorder/County Clerk.

7 And I would like to say that I think all of us as
8 registrars do support your internal processes, that you're
9 working to strengthen your internal processes. We can do
10 nothing but support that. That is excellent.

11 And I'm concerned that there could be some
12 inconsistencies with that. And now the new federal rule
13 that's been established in HAVA with the National
14 Institute of Standards and technology nest, which is now
15 in the federal Help America Vote Act, the agency that will
16 be doing the standards development.

17 And I'm concerned that the situation that we face
18 today in trying to -- in the Secretary of State trying to
19 promulgate quick guidelines in advance of systems of
20 development, certification or testing or even being mulled
21 out in a mock environment -- mock election environment,
22 let alone a potential presidential election year, where
23 democracy is at stake on the ballot, that there could be
24 systems that maybe wouldn't even meet the current federal
25 standards that are so important in, indeed, are required

1 in this Secretary's own certification process to meet
2 federal standards. So I'm concerned about the potential
3 of not having those standards at the federal level and yet
4 trying to have a new process at the state level.

5 I think we all have to do risk assessment when we
6 look at anything that we do in change. And one of the
7 things I think we should look at is the practicality of --
8 again, you heard the same -- but, you know, people talking
9 about an auditable record, which I do think many people
10 have no problem with, and we feel we already have it in
11 our system, is an auditable paper record. But to look at
12 where the voter right now is doing the review on the DREs,
13 they're reviewing all the ballot choices, and they have a
14 color code of red or blue, whatever colors they are, they
15 know which ones they voted and which ones they haven't.
16 And on a long ballot that can be multiple pages to do that
17 review.

18 I would like to show the ballot in November 5th,
19 2002, in Alameda County, which encompassed two sides of an
20 optical scanned ballot. And trying to determine how a
21 voter would be able to under glass review something of
22 this length, it would be -- seems unlikely that that could
23 be developed or built, because if you just say Measure Q,
24 then they don't know what Measure Q was. Where certainly
25 on the touch screen when we did the review, they did know

1 what it was. And you wouldn't want a voter reviewing
2 something on paper that they didn't know what it was,
3 because there's a lot of measures and a lot of races and
4 candidates.

5 So think of this doubled and it's pretty small
6 print. It's a lot smaller than on a screen. And how was
7 that going to be done technically where the paper -- they
8 can't see it all at once. Was it going to just have to
9 roll forward and back? And what happens then with -- I
10 don't know that there's anything that's been invented that
11 could do that.

12 And I think that gets to Scott Konopasek's
13 comment, is worrying about -- we really never conceived of
14 this as anything but an audit trail, but not a redundant
15 ballot in itself.

16 And several of us, actually about 80 election
17 officials from around the country, were in Washington DC
18 last week, including Scott and myself and Joel Vine and
19 some others in the room, Brad Clark in Alameda. And
20 Congressman Russ Holt, author of HR 2239 that has been
21 alluded to here today, actually came and spoke to our
22 group, which we were very, very pleased to have him
23 because, you know, it's not easy to come into a den of 80
24 or 90 election officials and talk about a bill that 99
25 percent are not interested in or are actually opposed

1 rather vociferously.

2 But he was there to actually take our comments.

3 And we was very accommodating. And we went and we asked
4 him specifically whether or not the intent of his bill was
5 to have a readable ballot. And he said, "Absolutely not.
6 That's not the intent of this bill." So if anyone thinks
7 they're going to get at something that looks like a ballot
8 that can be read later, that's not the intent of his bill.
9 Certainly you can ask him yourself. But in an audience of
10 many people with -- on the record, he said that.

11 So I think we do have to try to determine what it
12 is we're talking about. And certainly we'd like to ensure
13 that people -- registrars are involved in that process.

14 And I would like to leave with just the thought
15 that not all change is reform, and sometimes we need to be
16 thinking about that when we're thinking about change.

17 Thank you.

18 CHAIRPERSON KYLE: Thank you.

19 VICE CHAIRPERSON CARREL: Mark Phillips, Marcia
20 Rider, Deborah Hench.

21 MR. PHILLIPS: Hi. Mark Phillips from San Luis
22 Obispo Citizens for Open Voting.

23 Regarding the logistics of a voter-verified paper
24 ballot. I'm sure there's a lot of things that need to be
25 decided, I mean the type of paper it's going to be printed

1 on and the font size, a lot of things like that. I
2 certainly don't want to minimize how difficult this is
3 going to be. Although I still claim and I think a lot of
4 people in this room believe that it's absolutely necessary
5 that we go through the effort needed to figure out those
6 details and make it happen.

7 I don't quite understand the last lady's comment
8 that HR 2239 doesn't end up with a paper ballot that you
9 can read at the end of the day. I can't imagine that's
10 what he meant or that that's how that bill is written. I
11 mean the whole point of having the paper ballot at the end
12 of the day is to have something that you can read and to
13 have something that you can go back and look at in the
14 event there's a question of some sort. That's what's
15 going to make us all feel a lot better. If you have an
16 election that's close or funny in some way, you've got
17 something you can go back to and resurrect the vote.

18 As it is now, if you -- for example, they check
19 the number of voters that come into a polling place and
20 write down a list. And at the end of the day they look at
21 the number of votes that are registered on the machine,
22 say, the DRE. Well, what happens if those numbers don't
23 match? I mean, sure, you'd know that you've caught a
24 problem, but you don't know what the problem is, you don't
25 know where the problem is. And if you don't have a paper

1 ballot to go back and look at, there's going to be a big
2 question as to what the correct vote is. You're not going
3 to have a way of going back and figuring that out.

4 Now, a lot of the proponents are people -- a lot
5 of the people who don't think that the paper ballot is
6 necessary claim that, well, the machine has the ability to
7 print out a paper copy of whatever the electronic vote is.
8 Well, that's worthless. I mean it's just -- if you have a
9 corrupt file and you make a copy of it, now you've got a
10 hard copy of a corrupt file. It doesn't do you any good.

11 So, you know, the requirement for this paper
12 ballot is I think to make an average voter comfortable
13 with the system, and it's just completely a requirement.

14 Also -- I'm drawing a blank here. Oh, regarding
15 the open code aspect of things, the proprietary nature of
16 the way the code is right now, when that decision is made
17 upstream in the whole decision process that you're going
18 to allow codes that are, you know, proprietary, a lot of
19 things happen downstream of that decision which hinder the
20 transparency of the process. And I'm referring now to the
21 certification and testing procedures and results. As I
22 understand it, those are secret right now. We get to find
23 out that, yes, this piece of equipment is certified. But
24 we don't get to find out what the procedures were used to
25 certify it or what the results of that certification were.

1 And I suspect part of the reason for that is because the
2 code is proprietary.

3 Again, if we have open source code, then a lot of
4 these other things downstream can be more transparent, and
5 it makes the whole processes easier for the average voter
6 to have faith in.

7 Regarding the comments about disabled voters.
8 The touch screen machines, again, have a lot of advantages
9 for people who can't fill out a ballot because their hand
10 shakes or blind voters. One of the things I like about
11 touch screen machines is the accessibility -- is the fact
12 that people with handicaps are able to use them.

13 That should not preclude the possibility of a
14 paper ballot being printed by those machines. Now, I
15 understand there are, you know, going to be situations
16 where a blind voter, for example, might be able to use a
17 touch screen machine and then not be able to verify the
18 paper ballot. And, you know, I don't have a ready answer
19 for that at the moment. I mean it's possible that certain
20 voters under certain conditions like that could opt out of
21 the paper ballot aspect of it and just use the screen
22 version of "this is who you voted for. Is this right?"
23 And they could verify it that way. And if it was a blind
24 voter, it would be auditory.

25 But, again, these are problems that can be worked

1 out. We don't want to dumb down the whole process -- and
2 maybe that's a poor choice of words. But we don't want to
3 reduce the level of verification and of transparency of
4 the whole process to accommodate some special cases. We
5 need to, you know, deal with those conditions and
6 situations very carefully, but not say, "Well, because
7 they can't verify their paper ballet, then nobody's going
8 to get one." That I don't think is the right answer.

9 That's about it. Thanks.

10 VICE CHAIRPERSON CARREL: Thank you.

11 CHAIRPERSON KYLE: Thank you.

12 (Applause.)

13 VICE CHAIRPERSON CARREL: Marcia Rider.

14 MS. RIDER: I pass.

15 CHAIRPERSON KYLE: Pass.

16 We appreciate every pass.

17 (Laughter.)

18 VICE CHAIRPERSON CARREL: Now that we don't --
19 not that we're not considering your comments. But this is
20 going on -- we'll be here quite some time.

21 Deborah Hench, Megan Clark, and Marsha Wharff.

22 MS. HENCH: Deborah Hench, San Joaquin County
23 Registrar of Voters.

24 On these draft procedures that you have passed
25 out, I have some concerns. Of course my county does not

1 really want the VVPAT. We feel like we have a summary
2 report at the end of the night on each unit and it's
3 linked with every precinct and we know which ones go
4 where.

5 We do the one-percent manual recount like
6 everyone else. And we manage to watch -- make sure
7 everything matches.

8 A person said, well, a paper ballot you wouldn't
9 have that. And you wouldn't have the possibility of
10 having your paper ballots not match the roster. And
11 that's untrue.

12 We every election have a person who signs the
13 roster, picks up the ballot, gets mad and storms out.
14 Your count does not always match. We research the reason,
15 but there -- paper is no more secure than the touch
16 screen. They are what they are. They're ballots.

17 We do try and track everything, and we're not
18 going to change that. We'd like to improve our
19 procedures. And we're open to the differences from the
20 state.

21 However, on the parallel monitoring, I have some
22 real questions and concerns, because you're pulling touch
23 screen units, live units that can be voted on, and we
24 don't know where. They were \$3200 apiece. And what if
25 they get up -- those votes get uploaded into the count?

1 That's a concern. We would like to have some definite
2 idea of how this is going to work out.

3 So we feel comfortable when someone comes and
4 pulls our units. Of course this is also going to cost us
5 additional funds because we're going to have to buy
6 additional units because most of our equipment is going to
7 be assigned to polling places. You can't go into a
8 polling place and pull a unit out, because then you're
9 going to have to tell us what units you've pulled so we
10 can supply more units. And if we have our reserve ones
11 ready to go out because of high activity at a precinct and
12 we want to add additional units out there to help to
13 relieve the load, if you have them and we don't, then
14 we're in trouble.

15 So those are issues that I think you guys need to
16 think about before you implement your plan.

17 And one other feature was the printed ballot. Of
18 course you realize in San Joaquin County in 1990 we had a
19 very large ballot. We had Mark-A-Vote at that time, and
20 it was a ten-card ballot. Now, if you put that on one
21 piece of paper and kind of scroll it up, you have no idea
22 how long that's going to take a voter to vote. And we
23 have every chance every general election of having the
24 same thing happen.

25 So you're procedures of the voter-verifiable

1 paper audit trail is going to cost us a lot of money,
2 because it's not just when you add that piece of
3 equipment, but every election we have to go back and buy
4 paper. And the concern is, well, we can't just use copy
5 paper. You're requiring us to probably use some kind of
6 watermark paper. That's additional expense. And then ink
7 cartridges for every one of these units. And at this time
8 the only unit that I know of that can print an on-demand
9 ballot -- and it's virtually what you're talking about --
10 is a big LASERjet. You know, these are issues that we are
11 concerned about.

12 The last thing that we wanted to bring forward is
13 that, you know, when we do these paper audit trails right
14 now, which is providing the Secretary of State copies of
15 ballots, what they want is election night close of polls
16 to print every ballot that was voted on. And we don't
17 authorize our precinct officers at this time to have that
18 capability. We have to bring the units in and we print
19 them because it's a supervisory issue.

20 And to print those we estimate around 20 cases of
21 paper. If you do it single paper or whatever it's going
22 to be about 20 cases of paper, multiple ink cartridges,
23 service to the printer, because it's going to need service
24 after a hundred thousand ballots have been printed. And
25 that's why we ask at least if we could create the ballot

1 on the CDs or a DVD in order to have that as a hard copy
2 instead of paper because the paper would take two weeks to
3 print. And that just, you know, is extremely unfair to
4 put that burden on to counties.

5 And that's all I have.

6 VICE CHAIRPERSON CARREL: Thank you.

7 CHAIRPERSON KYLE: Thank you.

8 MS. CLARK: Hi. Megan Clark, Marin County,
9 again.

10 Mr. Carrel, you talked about not wanting to come
11 to rash decisions, you know, not to make your decisions in
12 an untimely manner. If I might suggest that already we
13 have what I would call a virus in the election system.
14 Not doing something about that virus in a timely manner is
15 already rash. So there -- in terms of timeliness, they're
16 both issues.

17 When it comes to printing costs, paper costs --
18 you know, our paperless society has cost us billions of
19 trees. But, in any case, there couldn't be an issue more
20 important than assuring the accuracy of the vote. Now,
21 the vote will never be a hundred percent accurate -- I can
22 guaranty that -- but to get as close as possible to an
23 accurate vote and to have a paper trail that can be
24 audited whether or not it is. And these are very, very
25 critical things.

1 And as a programmer of 17 years, I know that it's
2 easy to put a counter in a program that can change the
3 procedures of the program after the first thousand people
4 have voted. It's not -- it's very -- the ability to
5 mishandle either inadvertently or purposely the results of
6 the program are so -- it is such an easy thing to happen,
7 that it's not -- you know, it's trivial. And to have
8 opened ourselves to the ability to in a major way change
9 the election results is amazing. It's a very, very
10 dangerous. And I am the original little old lady in
11 tennis shoes who was your poll worker.

12 VICE CHAIRPERSON CARREL: Thank you.

13 CHAIRPERSON KYLE: Thank you.

14 VICE CHAIRPERSON CARREL: And to follow up on
15 that, we encourage everyone who does want to participate
16 in the electoral process to volunteer as poll workers. We
17 do need more poll workers for every election. Contact
18 your local county registrar.

19 Marsha Wharff.

20 MS. WHARFF: Marsha Wharff, Assessor/County
21 Clerk-Recorder of Mendocino County.

22 Our current contract we obtained our optical scan
23 units. But our touch screen units, our contract provides
24 for a voter-verifiable receipt already. And so we are
25 interested in this panel addressing the guidelines as soon

1 as possible, because we do not want to take possession of
2 any touch screens until they have the voter-verifiable
3 receipt.

4 I have had the opportunity to review the
5 guidelines. And I guess they will be put on the website
6 at some point so that the public can view them as well.
7 And I think that a lot of the concerns that have been
8 expressed about the size of the ballot, if the guidelines
9 are read the way we anticipated them to be implemented,
10 the ballot isn't going to be that long when it's reviewed
11 because it's only going to contain the name of the office
12 and whether -- who they voted for, not the entire ballot
13 with all the names on it.

14 There are a lot of items that are in the
15 guidelines that I think can be addressed. And if people
16 have comments, I'd like to hear about them. And I think
17 our working group would like to hear about them as well.
18 But I would urge the Panel to act on them as soon as they
19 get them, because I think that it's a -- that it
20 disenfranchises the vendors by not having the guidelines
21 by which to build the voter-verifiable audit trail.

22 Thank you.

23 VICE CHAIRPERSON CARREL: Thank you.

24 CHAIRPERSON KYLE: Thank you.

25 VICE CHAIRPERSON: Thank you.

1 Tim Zorach and Joseph Holder.

2 MR. ZORACH: I was scrupulous in my earlier
3 comments to avoid the name "Diebold."

4 However, it is beyond my comprehension that they
5 are still under consideration. What they've done in
6 California should have disqualified them and removed them
7 from any future consideration. And I would just encourage
8 you to move much more quickly in removing them from
9 consideration in this whole process.

10 Thank you.

11 VICE CHAIRPERSON CARREL: Well, that being out of
12 order. Thank you.

13 Joseph Holder. And you're the last card I have
14 for this item.

15 Oh, wait. I have two more.

16 After I take these three -- it's Joseph Holder,
17 Kim Alexander, and Greg Dinger -- do we not have any
18 more -- we have one more card.

19 We've never gotten this many people before.

20 MS. EDEN: I'm rescinding my pass.

21 (Laughter.)

22 VICE CHAIRPERSON CARREL: Okay. And your name
23 was?

24 MS. EDEN: Eden E-d-e-n. Sorry. You had such a
25 big smile on your face when I passed.

1 VICE CHAIRPERSON CARREL: Go ahead, Mr. Holder.

2 CHAIRPERSON KYLE: Go ahead.

3 MR. HOLDER: Good afternoon again.

4 This agenda item was supposed to be on the
5 certification procedures. And I was here last fall when
6 the Diebold TSx was certified.

7 Part of the voting systems is also how those
8 units are used out in the field. And there's supposed to
9 be administrative procedures developed, and they become
10 part of the certification. I never have seen any of those
11 yet and it really was not anything that was revealed at
12 those meetings.

13 One thing that was raised back on November 10th
14 when TSx was certified was -- some questions were raised
15 by myself and by others regarding security vulnerabilities
16 that had been revealed prior and there's been more since
17 then. And some of those security vulnerabilities could be
18 alleviated by changes in administrative procedures. And
19 that's a relatively simple thing to do. Washington State
20 has implemented those last September when they found out
21 about these things and they did implement some things by
22 isolating the GEM server, things like that.

23 I came across to where the Secretary of State
24 every even year by January 1st is supposed to have
25 conducted a review and amend if necessary the

1 administrative procedures for use with each voting system.
2 That clearly empowers the Secretary to implement immediate
3 measures, the procedures to start mitigating the security
4 vulnerabilities revealed in these prior studies. And I
5 have not heard, I've not seen a website, and I don't
6 know -- and this is a question to the panel and to the
7 Secretary of State or to the staff -- was this review
8 that's required by law done on the administrative
9 procedures that are out there that are supposed to be part
10 of the certification procedure? Also, I think that there
11 might be a problem with the counties complying in the past
12 with submitting their procedures for that voting system to
13 the Secretary of State's Office 29 days prior to the
14 election.

15 Thank you.

16 VICE CHAIRPERSON CARREL: Thank you.

17 Kim alexander, Greg Dinger, and Joyce Eden, who
18 rescinded in the past. I won't hold it against her. The
19 other panelists may though.

20 (Laughter.)

21 MS. ALEXANDER: Hi again. Kim Alexander with the
22 California Voter Foundation.

23 I don't have any specific comments on the draft
24 standards because I have not been provided with them yet.
25 And I would like to request that as a member of the

1 Secretary of State ad hoc touch screen task force, that I
2 and the other members of the task force be put in the loop
3 of the draft standard distribution so that we can add our
4 comments as well.

5 Some of the registrars who spoke here today
6 mentioned that there are no federal standards currently
7 that describe the voter-verified paper trail requirement.
8 I want to encourage this body to not delay development and
9 implementation of California's standards despite the
10 absence of federal standards. There's no reason to wait
11 for those. We have lots of provisions in our
12 certification process that go above and beyond the federal
13 provisions. So we don't need to wait. And, also, if we
14 did wait, we could be waiting a long time, since the
15 federal government has not yet funded NIST in its new
16 oversight rule, which I sure wish they would do soon
17 because we need that.

18 Conny McCormack mentioned a double standard. And
19 I just want to mention another double standard I've
20 noticed today. To say that we shouldn't go forward with
21 the vote-verified paper trail because there are no federal
22 standards but then to ignore those standards when it's
23 time to certify a new paperless touch screen voting
24 machine like the TSx, that's a double standards.

25 There is no reason to wait. We have several

1 counties, as Scott Konopasek mentioned. San Bernardino
2 and as well as Santa Clara County already have provisions
3 in their contracts with their vendors, in this case
4 Sequoia, to provide a voter-verified paper trail at no
5 additional cost to those counties.

6 We can begin minimizing the problem of inaudible
7 elections by getting a fair number of electronic ballots
8 back up on voter-verified paper trail by November 2004.
9 Let's start to see implementation of the paper trail
10 before and in advance of the 2006 absolute deadline
11 Secretary of State Shelley implemented.

12 The last statement I want to make is actually a
13 question. Are the draft standards available on the
14 website right now? And if not, when will they be?

15 VICE CHAIRPERSON CARREL: I'll direct that to
16 staff. I think it was discussed earlier. It seems like
17 yesterday almost.

18 But you said -- staff said earlier that we're at
19 a point where we're getting feedback from some groups that
20 we've given it out to. And once we do get back, it's down
21 to the internal review process. Then it'll be made
22 available to the public for public comment, correct?

23 MR. WAGAMAN: They are -- we are finishing the
24 internal review. At that point they would be available
25 either to be submitted to this Panel and then posted and

1 then you can open up public comment, or you can direct
2 staff to start the public comment as soon as that internal
3 processes is complete.

4 VICE CHAIRPERSON CARREL: Okay. Well, we may
5 have to take a motion on how to handle that. But I
6 think --

7 CHAIRPERSON KYLE: Soon.

8 VICE CHAIRPERSON CARREL: -- soon, within the
9 next two to three weeks, if not sooner.

10 MS. ALEXANDER: Thank you.

11 VICE CHAIRPERSON CARREL: Greg Dinger and Joyce
12 Eden.

13 MR. DINGER: Good afternoon. My name is Greg
14 Dinger. I am one of the principals of Verified Voting dot
15 Org. We're the leading website on this issue nationwide.

16 I don't think there's anybody in the room who
17 forgets ground zero, November 2000, Broward County. It
18 was everything that happened there that led to HAVA. And
19 yet we've got a melt-down after HAVA, after installing
20 electronic voting systems that don't have a paper trail.

21 There were elections officials who opposed the
22 notion of a paper trail in Florida. And today they're
23 sitting there completely scattered, wondering how to close
24 out a close race because they can't comply with state law.
25 They've ended up with a race where the apparent failure of

1 the voters to use the equipment correctly -- we didn't
2 have to worry about the machines failing. The humans
3 failed.

4 And we've got 134 votes that were not counted.
5 And we know this because there was a single race with
6 seven candidates for a state legislative house. Everybody
7 came to the polls for a single reason, to vote for that
8 race. This was not an under-vote, this was not a protest.
9 They failed to click that last button and vote their will.

10 So you've got 134 votes that weren't counted.
11 After tallying all the precincts, the race was won,
12 according to the totals that weren't in question, by 12
13 votes. State law requires a manual recount in the event
14 of less than a quarter of a percentage. We are well under
15 a quarter of a percentage.

16 So in the absence of a paper trail, there's no
17 means by which they could comply with state law.

18 I commend the woman from Mendocino, and I'm going
19 to send her a Valentine's card. As for the rest of you,
20 you're up against the people. I'm sorry. There are
21 thousands of people who are going to continue to pursue
22 this. And there's a lot more citizens than there are
23 elections officials.

24 (Applause.)

25 VICE CHAIRPERSON CARREL: The last card I have is

1 Joyce Eden.

2 MS. EDEN: Thank you very much. Appreciate that.

3 A few comments. First of all, Mr. -- I think
4 it's -- was it Freeman -- Mr. Freeman, do I have that
5 right?

6 MR. FREEMAN: Freeman.

7 MS. EDEN: -- Freeman, in his comments he said --
8 he noted that he put in requests into Diebold and then he
9 said -- and I'm quoting him -- and this was depending on,
10 quote, "how much information they are able to give me."
11 Now, we are completely dependent on what Diebold gives Mr.
12 Freeman. This is not transparency. This is not good.
13 And this tells us nothing about their system. You can go
14 through all these technical discussions and technical
15 people that you have. The information is coming from
16 Diebold, and there is no way to verify and check what it
17 in fact is.

18 As far as voter-verifiable paper printout ballot,
19 which is what I'm advocating, just want to make clear that
20 what I'm talking about, and perhaps the terminology is the
21 same as you're using it, voter-verifiable to me means that
22 a vote on touch screen, I get a printout that I have in my
23 hand -- not under glass -- in my hand. And as one of the
24 last registrars of voters explained, it would be the
25 person and the vote. It wouldn't be the whole entire

1 ballot. So it's not as much paper and as complicated as
2 it looks.

3 Also I want to reiterate about the optical scan.
4 We have an alternative here that needs to be seriously
5 considered. I am not an advocate of touch screen voting.
6 I'm asking for if we have touch screen voting that go to
7 verifiable paper printout ballot that I verified, it's in
8 my hand, that's what I put in the ballot box and that's
9 what's counted.

10 As I mentioned about the problems with merely an
11 audit trail before.

12 Okay. I cannot imagine that Russ Holt spoke to
13 the election officials, that he actually implied that his
14 intent was not to have a readable ballot, because I think
15 the intent of that bill is to give confidence to voters.
16 So I will be in touch with his office about that, and I
17 will let you know what his office says. Or else I'll have
18 them directly contact you on that. This needs to be
19 clarified.

20 And I would just leave you with Broward County in
21 your minds.

22 Thank you.

23 VICE CHAIRPERSON CARREL: Thank you.

24 Seeing there's no more comment, I'll pass it back
25 to the Chair.

1 We have one more card.

2 I'm giving her a glare.

3 MS. HECKLER: This is my first time up.

4 My name is Heather Heckler. I'm here
5 representing the Freed Center for Independent Living, a
6 resource center for people with disabilities in Nevada,
7 Sierra, Yuba, Sutter, and Colusa Counties.

8 I'd like to echo what Anita Cameron said, that a
9 voter-verified paper trail will have the effect of
10 excluding people with limited mobility, visual
11 impairments, and other disabilities from casting an
12 independent and secret ballot. And I would urge you while
13 considering the security issues brought up by others
14 today, to make voting accessible to all people.

15 I'd also like to respond to an earlier testimony
16 about, quote-unquote, dumbing down the systems, make it
17 accessible to all. Once you start excluding people, you
18 start treading on civil rights. Security is important,
19 but let's not exclude people because it makes the process
20 more convenient for others.

21 Thank you.

22 CHAIRPERSON KYLE: Thank you.

23 VICE CHAIRPERSON CARREL: Thank you.

24 On that point I just want to point out that given
25 the directive of the Secretary -- and just so that there's

1 no confusion, his directive was to provide a
2 voter-verified audit trail that was accessible.

3 And when the discussion -- so he recognizes, and
4 if you read his directive very clearly, he recognizes both
5 the issue of security and the issue of all voters being
6 able to vote privately and independently. And I think
7 that's not only one of the reasons why what Secretary
8 Shelley did was so dramatic, but also why it's going to
9 take longer than some people would like it to, because
10 there currently is no accessible voter-verified paper
11 ballot system and the vendors need to develop that
12 process. And so that's why it wasn't implemented sooner.

13 CHAIRPERSON KYLE: We've got more cards, so come
14 on down.

15 While you do that, then I want to make a couple
16 of comments based on what people have said today.

17 Number 1, I want to just echo what Mr. Carrel
18 said about the concern for disability accessible. That
19 was one of the first and foremost concerns of the
20 Secretary in looking at these standards, and it continues
21 to be so. And we spent a lot of time discussing it,
22 thinking about it, doing research on it, and we'll
23 continue to do so so that we can achieve that goal of
24 having a system that is accessible to all. We've looked
25 at ADA, we looked at HAVA, and we spent a lot of time on

1 that and we'll continue to do so so we can achieve that
2 goal.

3 Secondly, we will circulate the draft to a larger
4 community, both the scientific community, touch screen
5 task force, all good suggestions. And, again, we put it
6 on public comment, so they'll be an opportunity for that.

7 Someone raised a concern about what we call
8 incompatible activities. Just -- I think this was
9 mentioned a month ago, but I'll reiterate it. The
10 Secretary directed staff to redraft the standards for
11 staff working in the Secretary of State's Office. Unknown
12 is our incompatible activities standards that puts
13 restrictions on the revolving door of Secretary of State
14 staff, those who have been under legal review by the DPA,
15 Department of Personnel Administration, and by affected
16 parties, both employees and labor unions within the
17 Agency. So we're moving aggressively forward on that
18 front to close that door.

19 And someone also raised the question of
20 administrative procedures and whether they've been looked
21 at. And, in fact, we're currently in the process, and
22 that was reported on earlier, of looking at all the
23 administrative procedures around the state. But they are
24 reviewed regularly and the counties do work with us on
25 that. But we're doing a major overview of that now as

1 part of the audit.

2 I have a couple other points, but I'll let you go
3 ahead and testify.

4 MS. TREASURFIELD: All right. Tara Treasurfield
5 from Sonoma County.

6 I was a little late getting to the beginning of
7 this session, so I think I missed something. I know that
8 on November 21st the Secretary of State said that he will
9 require paper trail by July 2006. And then I think that I
10 heard something about the staff is recommending making
11 that optional by county. Did I get that wrong?

12 VICE CHAIRPERSON CARREL: Yes, we're just --

13 MS. TREASURFIELD: Great. Thank you.

14 PANEL MEMBER CARBAUGH: Mr. Chair, I have a
15 question at this time.

16 CHAIRPERSON KYLE: Go ahead. Ms. Carbaugh.

17 Mr. Freeman, there's been a couple questions with
18 regard to your technical advice to Secretary staff as well
19 as the Voting System, it's Panel members.

20 What assurances can you provide this Panel with
21 regard to the type of testing that you do and the check
22 and balance that you might provide on the information
23 that's given to you by the vendors?

24 MR. FREEMAN: I'm not really sure quite how to
25 answer that question. It's a little bit loaded in a few

1 places.

2 One of the things that I do is I also work with
3 the national ITAs and work closely with them in a number
4 of different functions. And one of the things I'm trying
5 to do when I do the state certification is include that
6 insight. That gets me into what was actually done at
7 those federal level tests. So that the state test becomes
8 a complement of what the federal test has done.

9 I try to follow some further standard procedures
10 within the limits of working with the variation according
11 to different systems and some of the criteria for the
12 testing that I'm given at the time and the task to do it;
13 to go through the exercise of what, you know, would be a
14 normal process -- a reasonable normal process of going to
15 the entire election development from the conception of
16 loading the database to creating election definition,
17 producing ballot layouts, actually working with the
18 ballots themselves and doing the reports after that.

19 In that process, I follow a practice established
20 by my predecessor, Robert Nageley, to try to include some
21 additional testing where we go in and we throw some X,
22 represent some of the variations where voters themselves
23 will, shall we say, not take full advantage of the system,
24 do strange things that may cause affected terms of it to
25 see if that causes problems, if the system's robust enough

1 to recognize and handle and process it.

2 I have also been paying -- I try to pay attention
3 to some of the security issues in terms of trying some --
4 different of the techniques that's supposed to be -- some
5 of the vulnerabilities and risk in terms of like the smart
6 cards and the processes in terms of the excess -- of
7 the DREs, and evaluate a little bit to the extent of how
8 easy that would be to subvert or how obvious it would be
9 if someone was trying to pull those entries in those
10 reports. In the process I've also been trying to take
11 forms of that process to show how visible such actions are
12 going.

13 Does that go ahead and indicate?

14 PANEL MEMBER CARBAUGH: Yeah, it does. I was
15 just trying to make a distinction, at least in my mind,
16 that the information that's provided to you by the vendors
17 and -- sources, that you take a critical look at that and
18 that it's -- you have your own mechanisms for testing.

19 MR. FREEMAN: Well, one of the things I do do as
20 part of the relationship with the ITAs, I have them send
21 me a controlled witness copy of the executable -- that's
22 used for the install, coming from the ITA as part of our
23 testing. That's a copy that was used. It was not handled
24 by the vendor at all. It was sent directly to me. And
25 then we do the installation at the time to the

1 individual -- for the test site and work with that copy.

2 As part of that process, I've also instituted as
3 practice where I'm trying to collect electronic
4 signatures. Identify all the files involved, electronic
5 signatures, to identify the exact configuration that's
6 being used for future use in terms of some of the audits
7 that are being done and work with the -- work that --
8 trying to work towards.

9 With that information I also try to collect as
10 much of the technical reference package I can, and will
11 use that information rather than what's directly provided
12 by the vendors.

13 There's a point though where I can't go beyond
14 that. I have to work with the information the vendors can
15 provide. But that information's supposed to be
16 information that's part of the package itself for the
17 local jurisdictions and the information that's provided to
18 them for their use. And I would go on that in terms of
19 what they will be seeing.

20 PANEL MEMBER CARBAUGH: Thank you.

21 CHAIRPERSON KYLE: Other questions from the
22 panel, on anything, or any comments?

23 I think a motion's in order regarding getting the
24 report in a timely but related fashion.

25 VICE CHAIRPERSON CARREL: Yeah, I would move that

1 in lieu of our next meeting that we have staff proceed
2 with expanding the dissemination of the draft standards to
3 other interested parties. And then once those comments
4 are received back, they integrate those into a draft and
5 it is then made public. And we take public comment on
6 that. And it doesn't have to go back to the VSP for us
7 again.

8 CHAIRPERSON KYLE: So as to expedite it?

9 VICE CHAIRPERSON CARREL: Expedite it. And then
10 a draft incorporating the public comments. Then it comes
11 back to the VSP.

12 CHAIRPERSON KYLE: Do I hear a second.

13 PANEL MEMBER MOTT-SMITH: Second.

14 CHAIRPERSON KYLE: All those in favor?

15 (Ayes.)

16 CHAIRPERSON KYLE: Anyone opposed?

17 Any abstentions?

18 The ayes have it.

19 All right. So let's go to Agenda Item 3, 3a,
20 Mark-a-Vote Procedures.

21 We have a number of comments though -- that
22 indicate 3. So I'm hoping those are actually people who
23 want to talk on this versus something else.

24 We're going to Item 3a, Mark-a-Vote Procedures.
25 And I'm hoping that those folks who are -- we have a

1 number of cards that indicate they want to speak on Item
2 3. And I'm hoping that in fact those are people who
3 really want to speak on Item No. 3, either A or B, and not
4 on something else. And if it's an error, that's fine.
5 We'll roll it over, or maybe it's been addressed already.

6 Go ahead, staff.

7 MR. WAGAMAN: DFM Associates is requesting
8 approval of a modification to their previously approved
9 procedures for the Mark-a-Vote voting system.

10 As a part of a comprehensive review of all
11 procedures by all voting vendors, which has been discussed
12 in both public comment and by the Chair, the Elections
13 Department requested vendors to review their current
14 procedures and update them to conform with current law and
15 practices. As part of this process DFM conducted a series
16 of meetings with representatives from their California
17 client counties to do that to a comprehensive review and
18 update of their current procedures.

19 The result of that review is what is before you.
20 And staff recommends that you adopt them.

21 CHAIRPERSON KYLE: Could you tell us what
22 counties those are?

23 MR. WAGAMAN: I will defer to my colleague.

24 MS. MEHLHAFF: I'm sorry. I don't have that in
25 front of me. From memory, it's -- I believe at some point

1 we had several meetings. Actually staff participated in
2 those. They were face-to-face sit-down meetings where the
3 users who use the Mark-a-Vote system convened with the
4 vendor and the Secretary of State's staff went through
5 word by word, line by line to bring these into compliance
6 in the sense just to address changes over the years. I
7 mean these is an old system that's been used in California
8 for years, and they just felt the need to just bring them
9 up and make them compliant with any changes in the
10 Elections Code.

11 You know, I know Sonoma County is here. I think
12 Contra Costa County is here. They were two of the
13 counties that did participate in that. Butte County is
14 also here. They participated in that. And, you know --
15 Madera's here. They participated. And I'm sure I'm
16 leaving a couple off. But off the top of my head, those
17 are the counties that I saw here and they did participate.

18 CHAIRPERSON KYLE: Okay. Any questions from the
19 panel?

20 We have a couple of cards on this topic.

21 Mr. Carrel, do you have those?

22 VICE CHAIRPERSON CARREL: No, I would ask -- if
23 this is 3a -- I don't know if they're in 3a or 3b. So do
24 we want to hear 3b first and then take public comment, or
25 not?

1 CHAIRPERSON KYLE: How many people do we have?

2 VICE CHAIRPERSON CARREL: Maybe six.

3 PANEL MEMBER MOTT-SMITH: I think that's a good
4 suggestion.

5 CHAIRPERSON KYLE: Do we have both? It kind of
6 mixes and matches those.

7 I'd prefer to keep them separate. So maybe if we
8 can run through. And the person who's on the card can
9 indicate whether you want to speak on this point or not.

10 VICE CHAIRPERSON CARREL: Megan Clark?

11 Megan Clark, going twice.

12 CHAIRPERSON KYLE: Megan Clark.

13 No. Okay.

14 I think she left. Marin, If I'm not mistaken.

15 VICE CHAIRPERSON CARREL: Linda Roberts.

16 CHAIRPERSON KYLE: Linda Roberts?

17 Yes. No.

18 VICE CHAIRPERSON CARREL: Barbara Goodwin?

19 MS. GOODWIN: This afternoon, still the same
20 person, Barbara Goodwin from Santa Clara county.

21 You have an option. Maybe you're not considering
22 it fully. It's quite radical. You could say, "We made a
23 mistake with these machines. Let's go for open source.
24 Let's go for the Australian system, crazy as it may be."

25 VICE CHAIRPERSON CARREL: Excuse me. Is this on

1 the Mark-a-Vote? Are your comments directed to this item?

2 MS. GOODWIN: Yes.

3 VICE CHAIRPERSON CARREL: To the Mark-a-Vote
4 procedures?

5 MS. GOODWIN: Yes.

6 VICE CHAIRPERSON CARREL: Okay.

7 MS. GOODWIN: So I'm just laying out an option
8 for. It's a possibility. You could go ahead with that.
9 It's not proprietary, it's not secret. It's very
10 transparent.

11 Thank you.

12 VICE CHAIRPERSON CARREL: Okay. Dennis Paull.

13 Mark Phillips and Robert Kibrick on 3a.

14 MR. PAULL: Yes, thank you.

15 I'd like to address actually the whole general
16 process here; and, that is, that Agenda Item 3, for
17 example, although it applies to other agenda items too.

18 If this panel wants to have input from the public
19 on agenda items -- and I understand that there's a lot
20 more people here than has generally been the case in the
21 past -- it's necessary that the supporting material, such
22 as the procedures under consideration, be published on
23 line or in hard copy or generally made available to the
24 public in advance of the meeting.

25 If vendors claim that these procedures are

1 proprietary and, thus, secret, their products should not
2 be considered for certification. As of last night at 6
3 p.m. the minutes of your last meeting, about four weeks
4 ago, have yet to be posted. This is not conducive to
5 encouraging public input.

6 CHAIRPERSON KYLE: Thank you.

7 VICE CHAIRPERSON CARREL: Mark Phillips and
8 Robert Kibrick.

9 MR. PHILLIPS: I'll pass for now.

10 VICE CHAIRPERSON CARREL: And Robert Kibrick.

11 MR. KIBRICK: I'm Robert Kibrick. I'm from Santa
12 Cruz County where we used to be a DFM Mark-a-Vote system.
13 It works very well. And I commend this system to -- I'm
14 sorry.

15 I live in Santa Cruz County where we used to be a
16 DFM Mark-a-Vote system. I'd simply like to second Mr.
17 Paull's remarks that as a member of the public I would
18 like to comment on these procedures that are under
19 discussion; but since they were not made available to the
20 public in advance of the meeting, there is no way for me
21 to usefully comment on procedures I haven't been allowed
22 to see.

23 The statement was also made that the vendor went
24 and talked to the various counties, to be users of the
25 system. And I would like to point out that the users of

1 these systems are not just the election officials; they
2 are the voters. We are the ultimate users of these
3 systems, and we are rarely consulted when it comes to
4 these procedures, when it comes to the choice of the
5 machines that are being made.

6 And I think this is an important point that
7 applies to all of these systems, is that the voters
8 themselves need to be given input into these
9 decision-making processes.

10 We've talked about not rushing to judgment here
11 and trying to proceed with your deliberations in a
12 rational and in a deliberate way not to make decisions
13 hastily. And yet we see at the county level decisions
14 hastily being made to embrace electronic technologies,
15 electronic technologies to the ultimate users, that is,
16 the public, the voters, who have not been given ample
17 input into that decision-making process.

18 So I would encourage you in this to look for ways
19 that the public in fact may be brought into this process.

20 Thank you.

21 CHAIRPERSON KYLE: Good point. Thank you.

22 PANEL MEMBER CARBAUGH: Mr. Chair, I have a
23 question on that point.

24 I know this has been raised in the past. And I'm
25 hoping that staff might be able to address the issue about

1 staff reports being made available prior to VSP meetings
2 to the general public.

3 MS. MEHLHAFF: Is the question, are they made
4 available or what's the procedure?

5 PANEL MEMBER CARBAUGH: Well, my understanding is
6 that they are not. And my question would be "Why not"?

7 MS. MEHLHAFF: That's solely at the direction of
8 the Panel and the Chair in terms of when they're made
9 available. The standard practice in the past has been
10 since -- in terms of the staff reports directly, that
11 those are not released prior to the hearing just because
12 that's the Panel's voting on that. They're definitely not
13 released prior to the panel receiving them. And given
14 timeframes associated with various issues, the Panel has
15 been receiving some of these in a shortened time period.
16 But that is solely at the direction of this Panel on
17 whether they want them released or not.

18 VICE CHAIRPERSON CARREL: Mr. Chair, I recognize
19 that as an issue, which is that sometimes we don't get the
20 documents fully until a day before or two days before.
21 And that's sometimes the result of figuring out what the
22 status of certain items are at that point. But I would --
23 I was surprised that the minutes from last meeting were
24 not posted. And I believe that -- obviously that's not
25 done internally. That's done by outside transcription

1 service. So we have to rely on their -- the amount of
2 work that they have we don't control.

3 But I would like to see if at all possible that
4 the minutes from the meeting be posted and that we
5 expedite it if there's a need to do that. And then,
6 second, that all staff reports be available at the hearing
7 so people can see what we're evaluating if not made public
8 on their website beforehand.

9 With regard to the procedures adopted by --
10 adopted as part of the certification process, are those
11 proprietary -- are there proprietary aspects to it? Or
12 are these just procedures that are then used by the local
13 election officials?

14 MS. MEHLHAFF: The procedures for use with the
15 system is a public document. They are used -- they're
16 essentially from set up to tabulation. They're not a real
17 in-depth document in terms of the technical security
18 aspects. It's pretty -- I mean if you look at them, which
19 I know you all have -- I mean there's information on here
20 in terms of, you know, what the polling place official
21 gets in terms of -- you know, they inspect and the
22 delivery of the precinct's supplies, the distribution of
23 absentee ballots, you know, sort the envelopes. It's at
24 that level. And this is the level where basically the
25 county registrars -- this is what they're using in terms

1 of what do their procedures say in terms of the seal and
2 container inspection checkpoint when that comes in. Those
3 types of things.

4 VICE CHAIRPERSON CARREL: I know we've certified
5 a lot of systems and we have the list of those systems
6 posted on our website.

7 Can we post on the website the links to the PDF
8 version of -- or some of type of version of these
9 procedures, all the procedures that have been certified?

10 MS. MEHLHAFF: If you would like us to do that,
11 yes.

12 VICE CHAIRPERSON CARREL: I mean since they're
13 public copies, it doesn't seem to make that -- it would
14 just make everyone's life easier so that accessibility is
15 increased.

16 CHAIRPERSON KYLE: Here's what I'm going to do,
17 Marc, short of taking that -- because we still have a
18 motion pending -- or need a motion pending on this item.
19 So I'm going to deal with that first.

20 But I think this raises sufficient concerns. I
21 shared it as well. And I think the light bulb went on
22 over a number of our heads at the time same time, to look
23 into changing the procedures, making them more
24 transparent, minimally doing what you're saying and having
25 all staff reports made available to public hearings, if

1 not prior to, and starting -- going back and cataloguing
2 those public documents that are relevant, like the
3 procedures that we know have been certified.

4 So I want to review that from what can be done
5 technically on a go-forward basis easily right away, and
6 also just legally what does fall within -- I want to check
7 with our house counsel on that.

8 But I think probably we can move forward on that
9 type of a change right away.

10 PANEL MEMBER CARBAUGH: Thank you.

11 CHAIRPERSON KYLE: So I do want to -- are there
12 any more comments from the panel?

13 I do want to entertain a motion then to adopt the
14 recommendations of the staff on this.

15 PANEL MEMBER MILLER: Mr. Chairman, could I ask
16 staff, would there be a problem of putting over the
17 adoption of these procedures until the next meeting? I
18 think there's poll worker training that's going on right
19 now and may be some urgency. But if we were to delay
20 until the next meeting, would that cause a problem?

21 MS. MEHLHAFF: Staff recommends that you proceed
22 on these just to get these taken care of.

23 One thing that they did add to this is they add
24 in the back section, Appendix C, "Don't Count" guidelines.
25 And this is a new feature of these procedures in terms of

1 what is actually a valid vote with -- because this is a
2 Mark-a-Vote, it's an optical scan system. So this is a
3 uniform count-don't count guideline before counties were
4 having to do their own interpretation of what was a vote
5 and what wasn't in terms of if you shaded part of it, if
6 you circled it. And this is a uniform definition of that.
7 So staff would encourage you to adopt these now so that
8 they can get these in place prior to the upcoming
9 election.

10 PANEL MEMBER MILLER: Okay. That's my question,
11 is timing. These need to be in place for the March 2nd
12 election. Poll worker training is going on right now, or
13 is imminent. And do they need to know now? Or if
14 elections officials knew February 16th, would that be too
15 late?

16 My only concern is -- I think it's a legitimate
17 point, if these were not made available to the public
18 until, you know, today or whenever, it's difficult for
19 them to comment if they haven't seen the material ahead of
20 time. But if there's a need to move forward now, then
21 that needs to be documented.

22 MS. MEHLHAFF: Staff can tell you that these
23 procedures are substantially better than the current
24 procedures that are on file now, because those were so
25 outdated, that's these do address -- I mean the previous

1 procedures have stuff that refer to Elections Code
2 sections that don't even exist in longer. And this was
3 something that we undertook early last year and asked
4 vendors to go through and update their procedures and
5 bring them forward to this body for review.

6 So these are substantially better. Staff would
7 recommend that you adopt these. And then if we go the
8 route of public review and opinion, then those can be
9 certainly changed and adopted into a subsequent edition.

10 PANEL MEMBER MILLER: There's no doubt in my mind
11 these are excellent and well done. And the input received
12 obviously was put to good use. I'm just concerned about
13 the lack of credible public input into the process.

14 But from what you're telling me, there is a need
15 to have these promulgated now so poll workers and election
16 officials can use them for the March 2nd election, and
17 delaying could cause problems in that regard?

18 MS. MEHLHAFF: That is staff's recommendation,
19 yes.

20 VICE CHAIRPERSON CARREL: So I'd make a motion to
21 adopt staff recommendation.

22 CHAIRPERSON KYLE: Do I hear a second?

23 PANEL MEMBER CARBAUGH: Second.

24 CHAIRPERSON KYLE: All in favor say aye.

25 (Ayes.)

1 CHAIRPERSON KYLE: Any opposed?

2 Any abstentions?

3 PANEL MEMBER DANIELS-MEADE: Abstain.

4 CHAIRPERSON KYLE: Okay. The ayes have it.

5 Let's go to Agenda Item 3b please.

6 PERSON FROM AUDIENCE: Can we get a copy of these
7 procedures? We need to --

8 CHAIRPERSON KYLE: Absolutely. We'll post them
9 ASAP.

10 VICE CHAIRPERSON CARREL: It may take --
11 hopefully they'll be on in the next few days. But it may
12 take a few days.

13 CHAIRPERSON KYLE: I'll direct the staff to do
14 that.

15 MR. WAGAMAN: Avante is -- Item 3b. Avante is
16 requesting approval of procedures for use with their
17 Vote-Trakker voting system. It's important to note that
18 this system includes a VVPAT, or voter-verified paper
19 audit trail system.

20 At the December 12th, 2002, meeting of this
21 panel, the VSPP conditionally certified Vote-Trakker on
22 the condition of the approval of procedures for use with
23 the system. Those procedures are now what is before this
24 panel. Adoption of the procedures would lift the
25 condition and fully certify the Vote-Trakker voting

1 system.

2 As discussed under Item 2, Secretary has issued a
3 directive mandating a voter-verified paper audit trail.

4 But as done under act -- Item 2, no standards have yet
5 been adopted to define what expectations we have of those
6 systems.

7 Therefore, staff recommends one of the two
8 following:

9 Either, one, table the adoption of the Vote
10 Trakker voting system procedures until standards are
11 adopted for the implementation of the directive mandate
12 on -- the directive mandating of accessible voter-verified
13 paper audit trail; or

14 Go ahead and adopt the Vote-Trakker voting system
15 procedures. The Vote-Trakker voting system would still be
16 required to meet whatever standards are eventually
17 implemented -- or implementing the directive. And the
18 procedures in their system would have to be modified. And
19 then seek VSPP approval.

20 CHAIRPERSON KYLE: Comments.

21 VICE CHAIRPERSON CARREL: Yeah, I have a question
22 of staff.

23 I know that Avante was taking their Vote-Trakker
24 and modifying it to incorporate what they have learned
25 through the early voting in Sacramento County in 2002.

1 And I guess my question is: Are these procedures for that
2 initial model, which has been no longer marketing, or is
3 it for the model that's currently in federal testing,
4 which incorporates those changes?

5 MS. MEHLHAFF: These are for the original system
6 that was before the Panel in 2002. And this is not for
7 the modified version. I would suspect that they would use
8 this as a template when they submit their new version.
9 But we have not seen their new version, which is --

10 VICE CHAIRPERSON CARREL: So this is for a
11 version that we know is not being marketed or manufactured
12 and -- please make a question while we're pursuing it.

13 And do they have any clients or are they -- are
14 there any counties that are seeking movement on this
15 before the March election?

16 MS. MEHLHAFF: I can't speak to the vendors'
17 marketing tactics in terms of what they're marketing or to
18 whom. But --

19 VICE CHAIRPERSON CARREL: But what I'm saying is,
20 are there other counties that use this system and will be
21 using it in March?

22 MS. MEHLHAFF: No.

23 VICE CHAIRPERSON CARREL: Okay. So there's no
24 rush to move on this now given that all the public comment
25 that we've taken today and public comment we're

1 anticipating taking, our own procedures, it would probably
2 be wiser to hold off on this, table this item until we
3 understand what our requirements are and they understand
4 that, and then they can produce procedures that then
5 comply with our requirements, correct? Is that what the
6 recommendation on tabling is?

7 MR. WAGAMAN: Yes, that would be the Option 1
8 that we presented to the Panel.

9 VICE CHAIRPERSON CARREL: Okay. I would make
10 that motion.

11 PANEL MEMBER DANIELS-MEADE: Second.

12 CHAIRPERSON KYLE: That would certainly be my
13 inclination. I hear a motion and a second.

14 Before we vote, is there any discussion on this?

15 MR. BURN: Yeah, the vendor wants to say
16 something.

17 And then I think we may have a couple comments
18 here.

19 VICE CHAIRPERSON CARREL: And the vendor can tell
20 me whether I incorrectly defined this as no longer being
21 marketed.

22 MR. BURN: My name is John Burn with Avante.

23 And I could first correct you with that. We are
24 marketing this product -- actively marketing this product,
25 as well as the new ones that we plan on bringing forward

1 too as well.

2 VICE CHAIRPERSON CARREL: Okay.

3 MR. BURN: And we do plan on making, as Dawn
4 mentioned, modifications to these existing procedures,
5 which would be incorporated in our new model as well as
6 our new software, which would meet the 2002 guidelines.

7 VICE CHAIRPERSON CARREL: Then let me ask you
8 directly instead of asking staff.

9 Are there any counties that -- well, let me just
10 be to the point. Are these procedures necessary for the
11 March election? Or if we were to hold off on this
12 adoption of these today and go through the process of
13 creating more standards for VVPAT so that you can
14 incorporate the requirements of VVPAT into your
15 procedures, would it create a hardship for any counties
16 using your system?

17 MR. BURN: Well, not specifically for any
18 counties using our system in March.

19 But I want to make it clear that these procedures
20 have actually been on the staff's desk for 14 months. And
21 I'm sure that there has been lots of deliberation
22 regarding your procedures that you're planning on
23 developing as well which we do not have -- I do not have
24 record of getting any specific requirement or input on
25 that. So I would like to --

1 VICE CHAIRPERSON CARREL: I did E-mail it to your
2 chairman -- or to your president. So I've sent it to
3 all -- I've sent a copy to all vendors. And your -- I
4 believe Mr. Chung was a recipient of.

5 MR. BURN: Okay. Then I'll make sure that we
6 respond right away.

7 But it does impact our new system that we bring
8 forward, because what we're applying for here is a
9 modification of this system that hopefully you'll approve
10 today, which I plan on submitting immediately after you
11 approve it, which is -- this is the test reports from the
12 ITAs of our new software, which meets the 2002 guidelines
13 as well as incorporates the accessible portion of the
14 voter-verifiable paper audit trail.

15 And I'd also like to submit for the record here a
16 letter from the California Council of the Blind, which
17 tested this equipment. And if I may read it for the
18 record. And it says:

19 "Dear, Mr. Burn: The California Council of the
20 Blind, the largest consumer organization of blind and
21 visually impaired consumers in the State of California,
22 has advocated for many years of the right of blind and
23 visually impaired individuals to cast a private and
24 independent verifiable ballot. Currently direct recording
25 equipment, or DREs, offer the only opportunity for this to

1 happen.

2 "Moreover, the desire from a growing segment of
3 the scientific voter population to have a voter-verifiable
4 ballot receipt has complicated the access issue with
5 respect to DRAs. Therefore, we applaud your efforts with
6 your product which will make the voter-verifiable ballot
7 receipt process accessible to blind and visually impaired
8 voters. And we believe this is a proactive start to
9 resolving this accessible issue.

10 "We appreciate the work that Avante has done with
11 the EVC 308 SBR and hope to see you at our fall convention
12 in Los Angeles."

13 And I also demonstrated that to --

14 VICE CHAIRPERSON CARREL: And I commend you for
15 taking the lead on providing accessible VVPAT. But that
16 was regarding your more recent model, not the
17 Vote-Trakker?

18 MR. BURN: Which is a modification of the
19 Vote-Trakker, which I expect to be -- I hope to have
20 certified procedures today because I believe to have any
21 modification the system procedures should be approved.

22 VICE CHAIRPERSON CARREL: Let me ask staff, if
23 you can respond to the comment about these being there for
24 14 months. Is this version there being considered for 14
25 months?

1 MS. MEHLHAFF: The version before you was not.
2 The system was conditionally certified by the previous VSP
3 panel, with understanding that Avante needed some work
4 done to their procedures. They weren't in compliance with
5 addressing the various aspects that we require. And we do
6 have a working group associated with this Panel made up of
7 registrars who specifically served to look at these
8 procedures. Actually there's a county clerk on there as
9 well. And they look at these from the user perspective to
10 make sure that they comply and they address the
11 appropriate things.

12 So they would -- Avante would submit procedures.
13 We would look at them. We would send them on to that user
14 group, as we do with other system procedures, as just part
15 of the routine process. And once they send them back and
16 say, "We're okay with these" or sometimes they'll have
17 some issues and we'll send them back to the vendor and ask
18 those to be clarified.

19 So the ones that are before you now, I believe
20 that we've had these since December.

21 VICE CHAIRPERSON CARREL: Okay. So this process
22 has been that Avante has submitted them, they've gone
23 through staff, they've gone through the seizure group,
24 comes back to Avante, they've revised it, they've come
25 back again, and so on and so forth.

1 And so that's how the process works.

2 MS. MEHLHAFF: It is a back-and-forth process,
3 correct.

4 MR. BURN: May I make a comment also?

5 Several people that served on the Advisory
6 Committee that gave feedback on the procedures also have
7 been publicly outspoken against the voter-verifiable paper
8 audit trail. So I -- we consider that a conflict of
9 interest.

10 VICE CHAIRPERSON CARREL: Okay.

11 CHAIRPERSON KYLE: Any questions for
12 representatives from Avante?

13 Okay. Thank you.

14 There were several cards submitted earlier for 3.
15 Were any of those for 3b?

16 All right. Then do I hear a motion?

17 VICE CHAIRPERSON CARREL: I made a motion.

18 CHAIRPERSON KYLE: Correct.

19 VICE CHAIRPERSON CARREL: And then it was
20 seconded.

21 Which is to adopt staff recommendation number 1.

22 CHAIRPERSON KYLE: Which is --

23 VICE CHAIRPERSON CARREL: -- to table adoption of
24 the Vote-Trakker system procedures until we've established
25 standards -- sorry -- which is to table adoption of the

1 Vote-Trakker voting procedures until we adopt standards so
2 that the procedures -- you know, and I would apologize to
3 Avante for this. But clearly we didn't know that on
4 November 21st the Secretary would come out his directive.
5 But that we table adoption until our procedures are
6 adopted here so that they as well as all other vendors are
7 working from the same guideline for establishing their
8 procedures and we're not bringing procedures that would
9 then later have to be changed.

10 Seeing that no county currently uses an Avante --
11 is an Avante system, I don't know that -- if we can move
12 our process through in the next month and a half, I don't
13 know that this would be a significant burden here in
14 California.

15 CHAIRPERSON KYLE: There's a second.

16 Any further comment from the Panel?

17 All those in favor of the motion say aye.

18 (Ayes.)

19 CHAIRPERSON KYLE: All those opposed?

20 Any abstention?

21 Ayes have it. The adoption's tabled until the
22 adoption of -- larger adoption of VVPAT standards.

23 VICE CHAIRPERSON CARREL: We've got comment cards
24 under "other business."

25 CHAIRPERSON KYLE: Okay. We're now under "other

1 business."

2 And, Mr. Mott-Smith, you have been waiting
3 patiently to read something into the record.

4 PANEL MEMBER MOTT-SMITH: Yes. Thank you very
5 much.

6 I have a letter from Betty Sue Nageley, who is
7 the widow of Bob Nageley, who was our tester for -- voting
8 systems tester for 40 years. And as a part of Bob's last
9 wishes, she's sending this letter and wanted it read into
10 the record

11 "Dear Mr. Kyle: As you know, my husband, Robert
12 Nageley, recently passed away. He was proud to have been
13 involved in the voting systems certification and testing
14 with the State of California for more than 40 years,
15 including his recent participation on the touch screen
16 task force to advise the Secretary of State about voting
17 systems security.

18 "One of the central issues addressed by the task
19 force was whether or not to require a voter-verified paper
20 trail as a component of electronic voting systems. My
21 husband spent a good deal of time contemplating this
22 question, and he devised a possible solution in terms of
23 how such a system would be designed.

24 "Simply stated, the voting machine would be
25 equipped to accept blank ballots from the voters. The

1 design concept envisions an external paper supply. Voters
2 would be given a blank ballot when they signed into the
3 polling place and instructed to insert it into the touch
4 screen machine prior to voting. The voter would then make
5 his or her selections.

6 "Once all the selections were made, the voter
7 would press a button or otherwise activate the printing of
8 his or her selections on to ballot paper. The paper
9 ballot would be displayed for the voter behind glass or
10 otherwise unavailable for any purpose other than review.
11 Voter could compare the printed ballot with the votes on
12 the touch screen. When the voter selected 'cast ballot,'
13 both the electronic record of the vote and the paper
14 record would be stored as a record of the vote.

15 "This design concept has many advantages, not the
16 least of which is that it would eliminate the need for
17 bulky rolls of paper in the voting machine.

18 "Although my husband has discussed this concept
19 with some members of the vendor community, he wanted me to
20 place it in the public domain so that anyone who is
21 interested could potentially develop the idea and do a
22 practical solution.

23 "My husband dedicated a large portion of his life
24 to the betterment of the democratic process through his
25 work with voting systems. And it is my hope that this

1 concept might continue his contribution.

2 "As you know, my husband was never interested in
3 self-aggrandizement. I would respectfully respect that if
4 anyone does develop this concept into a functioning voting
5 system, that my husband receives the appropriate credit
6 and recognition.

7 "If I can be of any assistance to you, please do
8 not hesitate to contact me.

9 "Sincerely, Betty Sue Nageley."

10 CHAIRPERSON KYLE: Thank you.

11 Do you want to make a motion to have that adopted
12 into the record?

13 PANEL MEMBER MOTT-SMITH: Yes, please. I'd move
14 that we place the letter from Ms. Nageley into the record.

15 CHAIRPERSON KYLE: I second.

16 Any comments?

17 All those in favor?

18 (Ayes.)

19 CHAIRPERSON KYLE: Any opposition?

20 The ayes have it.

21 We don't really have any agenda items, but I
22 guess we have --

23 VICE CHAIRPERSON CARREL: Four people have
24 requested to comment under "other business."

25 Given the lateness of the hour --

1 CHAIRPERSON KYLE: Well, some of these people
2 have spoken several times before. How about we ask one
3 person who has not spoken.

4 Kathleen Rai.

5 MR. WAGAMAN: She passed.

6 CHAIRPERSON KYLE: She passed?

7 Okay. How about if there's nothing new to add,
8 Judy Bertelsen, we've --

9 MS. BERTELSEN: The comments I made before I was
10 told should have been made under this. So you can maybe
11 move them.

12 CHAIRPERSON KYLE: They're in the record.
13 Whenever you made them, they're in the record.

14 Lindsay Vurek, we've heard from you a couple
15 times.

16 MR. VUREK: The only comment I have is the
17 conflict of interest --

18 CHAIRPERSON KYLE: At the microphone so we can
19 get it in and transcribed.

20 MR. VUREK: The conflict of interest that exists
21 on the panels I think should be rectified. The Secretary
22 of State has put out a thoughtful white paper, which is a
23 good start. And then to have the panel potentially
24 loaded -- I don't know what the ratio is; I'm certainly
25 going inquire into this -- have people that are hostile to

1 voter-verified paper trail, it's not appropriate. And you
2 should rectify that as soon as possible.

3 Thank you.

4 CHAIRPERSON KYLE: Okay. Dennis Paull, we've
5 heard from you three times. Anything New?

6 MR. PAULL: I have very short comments.

7 CHAIRPERSON KYLE: That'd be great if you have
8 something written.

9 MR. PAULL: Dennis Paull.

10 There's been much concern about the inability --

11 CHAIRPERSON KYLE: Speak right into the
12 microphone.

13 MR. PAULL: Sorry.

14 There has been much concern about the inability
15 of voting machines in some counties to hold a manual
16 recount. Counting ballots -- of ballot images printed
17 after the voter is gone doesn't serve any useful purpose.

18 I understand that we may not have a solution before
19 November of this year. But there are many procedures that
20 counties can put into place to help get the best results
21 from the existing equipment.

22 I'm in no way suggesting that these procedures
23 will substitute for a voter-verified ballot. I am
24 suggesting that the Elections Code is incomplete in
25 certain areas, where a simple change can add significant

1 security and reliability to the election process.

2 The Code requires that all counties submit copies
3 of their election procedures to the Secretary of State a
4 month before -- a month prior to each election. These
5 procedures are to be public documents. Without access to
6 a true description of the procedures actually used by
7 counties, it's very difficult for the public to provide
8 comment or meaningful oversight.

9 I have brought a detailed document for your
10 consideration, with copies for all the Panel members.

11 CHAIRPERSON KYLE: Thank you.

12 We have two more comments.

13 We've heard from both of you two or three times.

14 Is this something new?

15 MS. SMITH: Yes.

16 MR. KIBRICK: Yes.

17 CHAIRPERSON KYLE: Okay. Can you keep it brief?

18 MS. SMITH: Yes.

19 CHAIRPERSON KYLE: Okay.

20 MS. SMITH: This is just an addition to my

21 earlier comments. This is Maureen Smith again.

22 Back in May when I came to the first meeting, I
23 found out there that the Vote-Trakker system had had
24 procedures before the Elections Division certification
25 group for quite some time. And I would just ask that even

1 though they're not being used in any county now and you've
2 passed this latest resolution, I did get the feeling that
3 they were being treated in a prejudicial way from the
4 Elections Division. And I would like to say that I hope
5 you give them a date certain that they will be up for
6 approval on their procedures.

7 Thank you.

8 CHAIRPERSON KYLE: Thank you.

9 VICE CHAIRPERSON CARREL: Let me just say, every
10 vendor thinks they're being treated inappropriately by us.
11 But 14 months is probably a little too long. I recognize
12 that.

13 MR. KIBRICK: I'll try to keep this brief. Two
14 comments on the letter -- Robert Kibrick, again, from
15 Santa Cruz County, with regard to the letter from Mr.
16 Nageley's widow.

17 I simply would like to comment there are a couple
18 of products very similar to this concept, the Vogue
19 AccuMark system and the Popu-lite system, which take a
20 blank ballot and will mark it based on input from touch
21 screens. And I commend you to at least examine systems
22 and take Mr. Nageley's advice to task.

23 One other question I'd like to have for the
24 record. I came here today hoping you had an answer to the
25 question that I asked at the very beginning regarding the

1 AccuVote TSx and whether or not it contained a wireless
2 land card in the hardware deployed in California. I put
3 that question to Mr. Freeman during the break. He was
4 unable to answer that because he does not have that
5 information. I put that question also to a member of the
6 staff panel, who also was unable to answer that question.

7 So to me this raises a question of how do you
8 make informed judgments on certification when your own
9 technical consultant and when your own members of the
10 panel can't tell you whether a piece of hardware is in
11 fact in these machines deployed in California.

12 Thank you.

13 CHAIRPERSON KYLE: Good point. And we'll so
14 instruct our staff to investigate that.

15 MR. MARCH: Won't go past 30 seconds, I promise.

16 CHAIRPERSON KYLE: Last comment.

17 Is it something new, Mr. March?

18 MR. MARCH: Yes, it is.

19 Mr. Kyle, I'd like to ask on the record that --
20 first of all, I thank you for the questions that you've
21 prepared for Diebold for answering in the next 30 days.
22 I'd like to ask on the record that you make Diebold's
23 responses to those questions available to the public on
24 your website somewhere, so that we, the public, can
25 monitor the completeness of Diebold's responses and help

1 judge the completeness of those responses across the next
2 30 days, as you get the information back from Diebold.

3 VICE CHAIRPERSON CARREL: Given the type of
4 information that we're requesting and the fact that a lot
5 of it is technical and a lot of it may have legal
6 limitations on it, I would hope that you would allow us to
7 be the filter to let you whether it's been responsive or
8 not. That's our role. And given that there's legal
9 questions regarding how information that we request from a
10 vendor is handled, I don't know that that's appropriate.

11 MR. MARCH: I understand some redaction. But for
12 the most part --

13 CHAIRPERSON KYLE: Your request is duly noted,
14 Mr. March. And I understand it. And I would echo Mr.
15 Carrel's concern about the legality and whether we'd be
16 putting an agency of the State of California in harm's way
17 were we to allow proprietary information we ask for a
18 number of E-mail communications that could be
19 confidential. So without consulting with our legal
20 counsel, we can't give you an answer on that today. But
21 it's duly noted and we'll consider it.

22 MR. MARCH: As much as you can. Thank you for
23 listening.

24 CHAIRPERSON KYLE: I would move to adjourn.

25 PANEL MEMBER DANIELS-MEADE: Second.

1 (Laughter.)

2 CHAIRPERSON KYLE: All right.

3 VICE CHAIRPERSON CARREL: We're very tired.

4 We've been here with all of you. And we've tried to be as
5 open as possible.

6 MR. DINGER: Yeah. And you probably live closer
7 to here than the rest of us. We all have to drive.

8 CHAIRPERSON KYLE: Would you give us your name
9 please.

10 MR. DINGER: Greg Dinger from San Rafael.

11 Back during the recall election a bunch of folks
12 scraped poll data -- precinct data off of the state
13 website in order to try to do statistical analysis against
14 it and determine what things were looking like, with the
15 state participating, with activists, with citizens, by
16 providing the ability to download that precinct data as a
17 spreadsheet, for example, so that we can participate in a
18 poll watching effort after the March election.

19 And, secondly, would it be possible --

20 CHAIRPERSON KYLE: Yeah, that's a good question.
21 I don't know. We'll look into it. I'm not even sure we
22 collect --

23 MR. DINGER: And we don't want to intrude, but
24 the data --

25 CHAIRPERSON KYLE: No, I hear you.

1 MR. DINGER: And the same spreadsheet form
2 that is on --

3 CHAIRPERSON KYLE: Staff's taking notes.

4 MR. DINGER: -- on the website. And precinct
5 totals taped on the window at the precincts.

6 CHAIRPERSON KYLE: And that's something we don't
7 have, I'm being told by our IT Director. We don't have
8 it. That's at the county level. It's not at the state
9 level.

10 MR. DINGER: And, for example.

11 CHAIRPERSON KYLE: We could get it and then
12 forward it to you about 60 or 90 days after we get it.

13 MR. DINGER: For example, I believe that I have
14 accurate knowledge that the Diebold scan counties have the
15 ability -- maybe other counties also have this ability --
16 but the Diebold precincts print precinct totals that are
17 then taken in the bag to the county. We'd like to see a
18 copy of those precinct totals made publicly available.

19 CHAIRPERSON KYLE: You'd have to identify the
20 county and talk with those counties. That's again a
21 county-level procedure, not something that we deal with.

22 VICE CHAIRPERSON CARREL: It's the same mandate
23 on the counties.

24 PANEL MEMBER CARBAUGH: Mr. Chairman, just in
25 closing, I want to take a minute to thank everybody for

1 coming to Sacramento today, to take time out of your busy
2 day and providing us testimony. It's been very helpful.
3 It's been educational from my standpoint. And I wanted to
4 thank everybody for being here.

5 MS. TREASURFIELD: Just one last one. Very
6 short.

7 Tara Treasurfield, Sonoma County.

8 I would just like to encourage the Panel -- I
9 thank you so much for your time today. I know this is
10 difficult for you.

11 I would like very much for you to pay close
12 attention to Avante. I was aware last June that they were
13 struggling, trying to get certification. And it looked to
14 me like there were some difficulties with the people on
15 the certification panel, who have gone on to work for
16 Diebold and ES&S and Sequoia.

17 So I urge you to pay attention, real close
18 attention and get them certified. This is a company that
19 now has a paper system already available for us. The
20 Secretary of State wants their voter-verified paper audit
21 trail. And you have allowed the continuation of
22 Diebold, which is a paperless system, that's given
23 tremendous problems to this state.

24 So I urge you, please, take a close look and
25 expedite the process for Avante.

1 Thank you very much.

2 CHAIRPERSON KYLE: Thank you.

3 (Applause.)

4 CHAIRPERSON KYLE: There was a motion and second
5 to adjourn. Everyone's in favor.

6 (Laughter.)

7 CHAIRPERSON KYLE: This meeting is closed.

8 (Thereupon the Secretary of State, Voting
9 Systems and Procedures Panel meeting
10 adjourned at 2:30 p.m.)
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1 CERTIFICATE OF REPORTER

2 I, JAMES F. PETERS, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing Secretary of State, Voting Systems and
7 Procedures Panel meeting was reported in shorthand by me,
8 James F. Peters, a Certified Shorthand Reporter of the
9 State of California, and thereafter transcribed into
10 typewriting.

11 I further certify that I am not of counsel or
12 attorney for any of the parties to said meeting nor in any
13 way interested in the outcome of said meeting.

14 IN WITNESS WHEREOF, I have hereunto set my hand
15 this 25th day of January, 2004.

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23 JAMES F. PETERS, CSR, RPR
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